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Philip Floyce

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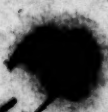

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PRACTICE

OF THE

Ecclesiastical Courts.

 Philip Floyce
Hof, of university

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THE
P R E F A C E.

*T*HE practice of the ecclesiastical courts having not been so fully and plainly treated of hitherto as might be wished for ; neither for the use and benefit of the practitioners therein, nor the information of such gentlemen of the common law, clergymen and others, whose business may require some knowledge of the nature and practice of these courts ; to remedy these inconveniencies the ensuing Treatise is particularly calculated ; the variety of useful matters, and the method they are treated in, may be seen by the Table of Contents : and the great exactness wherewith the whole is executed, every judicious reader will easily perceive.

A

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IN:

INTRODUCTION

To the General Rules of Practice in the
Ecclesiastical Courts.

*Of the Writ De Excommunicato Capi-
endo ; with the whole Proceedings on
Excommunications.*

‘ **F**ORASMUCH as divers persons Stat 5. Eliz.
c. 23.
‘ offending in many great crimes 3 Inst. 39.
‘ and offences, appertaining merely to 43. 12 Co.
‘ the jurisdiction and determination of 77. 1 Rol.
‘ the ecclesiastical courts and judges of 174.
‘ this realm, are many times unpunish-
‘ ed, for lack and want of the good and
‘ due execution of the writ *de excommu-* 4 Inst. 219.
‘ *nicato capiendo*, directed to the sheriff Cro. El. 144.
‘ of any county for the taking and appre- 1 Bulst. 122.
‘ hending of any such offenders ; the 3 Bulst. 92.
‘ great abuse whereof, as it should seem
‘ hath grown, for that the said writ is not
‘ returnable in any court, that might
‘ have the judgment of the well execut-
‘ ing

ing and serving of the said writ, according to the contents thereof; but hitherto have been left only to the discretion of the sheriffs and their deputies, by whose negligencies and defaults, for the most part, the said writ is not executed upon the offenders as it ought to be, by reason whereof such offenders be greatly encouraged to continue their sinful and criminous life, much to the displeasure of Almighty God, and to the great contempt of the ecclesiastical laws of this realm.

2. Wherefore for the redress thereof, be it enacted, by the queen's most excellent majesty, &c. That from and after the first day of May next coming, every writ of *excommunicato capiendo*, that shall be granted and awarded out of the high court of chancery, against any person or persons within the realm of England, shall be made in the time of the Term, returnable before the queen's highness, her heirs and successors, in the court commonly called the king's bench, in the term next after the *teste* of the same writ; and the same writ shall contain at the least twenty days between the *teste* and return thereof.

Writ to be in termtime only.

Returnable in the king's bench.

and 20 days to be between the teste and return.

And

‘ And after the same writ shall be *After sealing*
‘ so made and sealed, that then the *to be delivered*
‘ said writ shall be forthwith brought *to the sheriff.*
‘ into the said court of king’s bench,
‘ and there in the presence of the
‘ justices shall be opened, and delivered
‘ of record to the sheriff or other
‘ officer, to whom the serving and
‘ execution thereof, shall appertain, or
‘ to his or their deputy or deputies.

‘ And if afterwards it shall or may
‘ appear to the justices of the same
‘ court for the time being, that the
‘ same writ so delivered of record, be
‘ not duly returned before them at the *Sheriff not re-*
‘ day of the return thereof; or that *turning the*
‘ any other default or negligence hath *writ in due*
‘ been used or had in the not well ser- *time may be*
‘ ving and executing of the said writ, *amerced.*
‘ that then the justices of the said
‘ court, shall and may, by authority
‘ of this act, assess such amerciamment
‘ upon the said sheriff or other officer,
‘ in whom such default shall appear, as
‘ to the discretion of the said justices
‘ shall be thought meet and convenient;
‘ which amerciamment so assessed, shall
‘ be estreated into the court of *Ex-*
‘ chequer, as other amerciament have
‘ been used.

‘ 3. And

Sheriff not obliged to bring the body into court, upon the return of the process; but to certify the execution thereof.

If the Sheriff return Non est inventus, a writ of Capias to be awarded.

First Capias, Cro. Jac. 566.

Returnable in term-time two months after the Teste, with proclamation.

3. And it is also enacted, that the sheriff or other officer, to whom such writ of *excommunicato capiendo*, or other process, &c. shall be directed, shall not be compelled to bring in the body of such person or persons as shall be named in the said writ or process, into the court of king's-bench, at the day of the return thereof; but shall return the same writ and process thither, with declaration briefly, how and in what manner he hath served and executed the same, to the intent, that thereupon the said justices may then further therein proceed, according to the tenor and effect of this present act.

4. And if the said sheriff or other officer to whom the execution of the said writ shall so appertain, do or shall return, that the party or parties named in the said writ cannot be found within his bailiwick; that then the said justices of the king's bench for the time being, upon every such return, shall award one writ of *capias*, against the said person or persons named in the said writ of *excommunicato capiendo*, returnable in the same court in the term-time, two months, at least, next after the *teste* thereof, with a proclamation to be contained within the said writ of *capias*, that the sheriff or other officers,

I N T R O D U C T I O N .

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officers, to whom the said writ shall
 be directed, in the full county-court,
 or else at the general assizes and goal
 delivery to be holden within the said
 county, or at a quarter-sessions, to be
 holden before the justices of the peace
 within the said county, shall make open
 proclamation ten days at the least be-
 fore the return, that the party or par-
 ties named in the said writ, shall within
 six days next after such proclamation,
 yield his or their body or bodies to
 the prison of the said sheriff or other
 such officer, there to remain as a pri-
 soner, according to the tenor and
 effect of the first writ of *excommu-*
nicato capiendo, upon pain or for-
 feiture of ten pounds; and thereupon
 after such proclamation had, and the
 said six days past and expired, then
 the said sheriff or other officer, to
 whom such writ of *capias* shall be
 directed, shall make return of the
 same writ of *capias* into the said
 court of king's bench, of all that he
 hath done in the execution thereof,
 and whether the party named in the said
 writ hath yielded his body to prison
 or not, as mentioned in the said *capias*.

*To be made
ten days before
the return.*

*The party to
surrender him-
self in six*

*days, under
penalty of
10l.*

*Sheriff to make
return there-
of, whether
the party hath
surrendered.*

5. And if upon the return of the
 said sheriff, it shall appear, that the
 party or parties named in the said
 writ of *capias*, or any of them
 have

*Party not sur-
rendering upon
the first *capias*,
forfeits 10l.
for every such
default.*

‘ have not yielded their bodies to the
 ‘ gaol and prison of the said sheriff,
 ‘ or other officer, according to the same
 ‘ proclamation; that then every such
 ‘ person that so shall make default,
 ‘ shall, for every such default, forfeit,
 ‘ to the queen, her heirs and succes-
 ‘ sors, ten pounds, which shall likewise
 ‘ be estreated by the said justices into
 ‘ the said court of exchequer, in such
 ‘ manner and form as fines and amer-
 ‘ ciaments there taxed and assessed, are
 ‘ used to be.

*And in default
 thereof, second
 capias to be
 then awarded
 under 20l. pe-
 nalty, for not
 appearing.*

*To be served
 as the first
 writ of capi-
 as, with the
 like penalty of
 20l.*

‘ 6. And thereupon the said justices of
 ‘ the king’s bench shall also award forth
 ‘ another writ of *capias* against the said
 ‘ person or persons, that so shall be re-
 ‘ turned to have made default, with
 ‘ such like proclamation as was contain-
 ‘ ed in the first *capias*, and a pain of
 ‘ twenty pounds, to be mentioned in
 ‘ the said second writ and proclama-
 ‘ tion: and the sheriff or other of-
 ‘ ficer, to whom the said second writ
 ‘ of *capias* shall be so directed, shall
 ‘ serve and execute the said writ, in
 ‘ such-like manner and form, as be-
 ‘ fore is expressed, for the serving and
 ‘ executing of the said first writ of
 ‘ *capias*; and if the sheriff or other
 ‘ officer shall return upon the said se-
 ‘ cond *capias*, that he hath made the
 ‘ proclamation according to the tenor
 ‘ and

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‘ and effect of the same writ; and
 ‘ that the party hath not yielded his
 ‘ body to prison, according to the
 ‘ tenor of the said proclamation; that
 ‘ then the party aforesaid, that shall so
 ‘ make default, shall, for his contempt
 ‘ and default, forfeit to the queen’s
 ‘ highness, her heirs and successors,
 ‘ the sum of twenty pounds, which
 ‘ said sum of twenty pounds, the said
 ‘ justices of the king’s bench for the
 ‘ time being shall likewise cause to be
 ‘ estreated into the said court of ex-
 ‘ chequer, in manner and form afore-
 ‘ said.

7. And then the said justices shall *And in further*
 ‘ likewise award forth another writ of *default, a*
 ‘ *capias* against the said party, with *third writ of*
 ‘ such proclamation and pain of for- *capias in like*
 ‘ feiture as was contained in the said se- *manner to be*
 ‘ cond writ of *capias*; and the sheriff *awarded.*
 ‘ or other officer, to whom the said
 ‘ third writ of *capias* shall be so di-
 ‘ rected, shall serve and execute the
 ‘ said writ of *capias*, in such-like
 ‘ manner and form as before in this
 ‘ act is expressed and declared, for the
 ‘ serving and executing of the first and
 ‘ second writs of *capias*; and if the
 ‘ sheriff or other officer, to whom the
 ‘ execution of the said third writ shall
 ‘ appertain, do make return of the
 ‘ said third writ, that the party upon
 ‘ such

Party to pay 20l. Fine for every default in not yielding his body to gaol, after proclamation made of each capias.

such proclamation hath not yielded his body to prison, according to the tenor thereof, that then every such party, for every such contempt and default, shall likewise forfeit to the queen's majesty, her heirs and successors, other 20l. which sum of 20l. shall be likewise estreated into the said court of exchequer, in manner and form aforesaid.

In default thereof, fourth writ of capias, with like proclamation and penalty, and so on, ad infinitum.

And thereupon the said justices of the king's bench shall likewise award forth one writ of *capias* against the said party, with like proclamation and like pain of forfeiture of 20l. and also that the said justices shall have authority by this act, infinitely to award such process of *capias*, with

Discretionary power vested in the justices, to award such writ or writs of capias that so shall make default, as aforesaid,

such proclamation and pain of forfeiture of 20l. as is before limited against the said party, that so shall make default in yielding of his body to the prison of the sheriff, until such time, as by return of some of the said writs before the said justices, it shall and may appear, that the said party hath yielded himself to the custody of the said sheriff or other officers, according to the tenor of the said proclamation.

And that the party, upon every default and contempt by him made against the proclamation of any of the

the

INTRODUCTION.

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‘ the said writs so infinitely to be
 ‘ awarded against him, shall incur like *with like pain*
 ‘ pain and forfeiture of twenty pounds, *and forfeiture*
 ‘ which shall be likewise estreated, in *of 20 l.*
 ‘ manner and form aforesaid.

‘ 8. And be it further enacted, that *Person surren-*
 ‘ when any person or persons shall yield *dering himself*
 ‘ his or their body or bodies to the *upon any of*
 ‘ hands of any sheriff or other officer, *the said writs*
 ‘ upon any of the said writs of *of capias, to*
 ‘ that then the same party or parties, *remain in pri-*
 ‘ that shall so yield themselves, shall *son, without*
 ‘ remain in the prison and custody of *bail or main-*
 ‘ the said sheriff or other officer, with- *prize, as if*
 ‘ out bail, baston, or mainprize, in *taken upon the*
 ‘ such-like manner and form to all *original writ*
 ‘ intents and purposes, as he or they *of excom-*
 ‘ should or ought to have done, if he *municato ca-*
 ‘ or they had been taken and appre- *piendo.*
 ‘ hended upon the said writ of *excommu-*
 ‘ nicato capiendo.

‘ 9. And it is also enacted, that if *Any sheriff,*
 ‘ any sheriff or other officer, by whom *&c. making an*
 ‘ the said writ of *capias* shall be re- *undue return*
 ‘ turned as is aforesaid, do make an *upon any of the*
 ‘ untrue return upon any of the said *said writs of*
 ‘ writs that the party named in the *capias, the*
 ‘ said writ have not yielded his body *party thereby*
 ‘ upon the said proclamations, or any *grieved may*
 ‘ of them, where indeed the party did *recover 40 l.*
 ‘ yield himself, according to the effect
 ‘ of the same, that then every such she-
 ‘ riff or officer for every such false and
 ‘ untrue

INTRODUCTION.

' untrue return, shall forfeit to the
 ' party grieved and damnified by the
 ' said return the sum of 40*l*. for the
 ' which sum of forty pounds, the said
 ' party grieved shall have his recovery
 ' and due remedy by action of debt,
 ' bill, plaint or information, in any of
 ' the queen's courts of record, in
 ' which action, bill, plaint, or infor-
 ' mation, no essoign, protection, or
 ' wager of law shall be admitted or
 ' allowed for the party defendant.
 ' 10. Saving and reserving to all
 ' archbishops, bishops, and all others
 ' having power to certify any person
 ' excommunicated, and like authority
 ' to accept and receive the submission
 ' and satisfaction of the said person so
 ' excommunicated, in manner and
 ' form heretofore used; and him to
 ' absolve and release, and the same to
 ' signify, as heretofore hath been ac-
 ' customed, to the queen's majesty,
 ' her heirs and successors into the
 ' high court of chancery, and there-
 ' upon to have such writs for the de-
 ' liverance of the said person so absolv-
 ' ed and released from the sheriffs's cu-
 ' stody or prison, as heretofore they
 ' or any of them had, or of right
 ' ought, or might have had; any thing
 ' in this present specified or contained
 ' to

*And no essoign,
 protection, or
 wager of law
 to be allowed
 the defendant.*

*Reserving
 power to arch-
 bishops, bi-
 shops, to re-
 ceive the sub-
 mission of the
 person excom-
 municated.*

*And also to ab-
 solve, release,
 and the same
 to signify to the
 king.*

*And to have
 writs from the
 sheriff for the
 deliverance of
 said persons so
 absolved.*

‘ to the contrary thereof in any wise
‘ notwithstanding.

‘ 11. Provided always that in *Wales*, Except Wales,
‘ the counties palatines of *Lancaster*, Counties Pa-
‘ *Chester*, *Durham* and *Ely*, and in the latine, and
‘ *Cinque Ports*, being jurisdictions and other places
‘ places exempt, where the queen’s exempt from
‘ majesty’s writ does not run, and pro- the king’s
‘ cess of *capias* not returnable from writ.
‘ thence into the said court of king’s
‘ bench, after any *significavit*, being
‘ of record in the said court of chan-
‘ cery, the tenor of such *significavit*, The tenor of
‘ by *mittimus*, shall be sent to such of such significa-
‘ the head officers of the said county vit, by mitti-
‘ of *Wales*, counties palatines, and mus, shall be
‘ places exempt, within whose offices, sent to the
‘ charge or jurisdiction, the offenders heads thereof,
‘ shall be resident, *i. e.* to say, to the where the de-
‘ chancellor or chamberlain for the linquent is re-
‘ said county palatine of *Lancaster* and sident.
‘ *Chester*, and for the *Cinque Ports*, to
‘ the lord warden of the same, and
‘ for *Wales* and *Ely*, and the county
‘ palatine of *Durham*, to the chief jus-
‘ tice or justices there; and thereupon
‘ every of the said justices and officers,
‘ to whom such tenor of *significavit*,
‘ with *mittimus*, shall be directed and
‘ delivered, shall, by virtue of this The heads of
‘ statute, have power and authority such exempt
‘ to make like process to the interior jurisdictions
‘ officer to make like
‘ process.

Returnable before their justices there, two months after the teste.

And limited in term time.

What persons are not liable to the pains and forfeitures of any writ of capias, and upon what account.

The party thereby grieved may plead the reason why, in bar thereof.

‘ officer and officers, to whom the execution of process there doth appertain, returnable before their justices there, at their next sessions or courts, two months at the least after the *teste* of every such process; so always as in every degree they shall proceed in their sessions and courts, as the justices of the said court of king’s bench are limited by the tenor of this act in term-times, to do and execute.

‘ 12. Provided also, and be it enacted, that any person at the time of any process of *capias* aforementioned, awarded, being in prison, or out of the realm, in the parts beyond the seas, or within age, or of *non sanæ memoriæ*, or woman covert, shall not incur any of the pains or forfeitures aforementioned, which shall grow by any return or default happening, during such time of non-age, imprisonment, being beyond the sea, or *non sanæ memoriæ*, and that by virtue of this statute, the party grieved may plead every such cause or matter in bar thereof, and upon the distress, or other process that shall be made for levying of any of the said pains or forfeitures.

‘ 13. And

‘ 13. And if that the offender a-Cro. Car. 197.
 ‘ gainst whom any such writ of ex- 199.
 ‘ *communicato capiendo* shall be awarded, Latch 174,
 ‘ shall not, in the same writ of *excom-* 204.
 ‘ *municato capiendo*, have a sufficient Writ of ex-
 ‘ and lawful addition, according to the communication
 ‘ form of the statute of 1 Hen. 5. in not having a
 ‘ cases of certain suits, whereupon sufficient ad-
 ‘ process of exigent are to be award- dition, accord-
 ‘ ed; or if in the *significavit* it be not ing to the Sta-
 ‘ contained, that the excommunication tute of 1 H. 5.
 ‘ doth proceed upon some cause or Or signifi-
 ‘ contempt of some original matter of vit not setting
 ‘ heresy, or refusing to have his or forth the ori-
 ‘ their child baptized, or to receive ginal cause,
 ‘ the holy communion, as it is now whereupon
 ‘ commonly used to be received in the said writ is-
 ‘ church of *England*, or to come sued, wanting
 ‘ divine service, now commonly used such additions,
 ‘ in the said church of *England*, in all pains and
 ‘ continency, usury, simony, perjury forfeitures be-
 ‘ in the ecclesiastical court, or idola- come void
 ‘ try; that then all and every pains and arising there-
 ‘ forfeitures limited against such from.
 ‘ sons excommunicated by this statute,
 ‘ by reason of such writ of *Excom-*
 ‘ *municato capiendo*, wanting sufficient
 ‘ additions, or of such *significavit*,
 ‘ wanting all or any other causes, as
 ‘ aforesaid, shall be utterly void in law;
 ‘ and by way of plea to be allowed to
 ‘ the party grieved.

‘ 14. And

If the addition shall be a nuper, one writ of capias shall be awarded without a pain, with proclamation in the county where the offender shall be most resident.

Returnable like the first capias.

Proclamation not made as aforesaid, all forfeitures void.

‘ 14 And if the additions shall be
 ‘ with a *nuper* of the place, then in
 ‘ every such case, at the awarding of
 ‘ the first *capias*, with proclamation,
 ‘ according to the form mentioned,
 ‘ one writ of proclamation (without
 ‘ any pain expressed) shall be awarded
 ‘ into the county where the offender
 ‘ shall be most commonly resident at
 ‘ the time of the awarding of the said
 ‘ first *capias*, with pain in the same
 ‘ writ of proclamation, to be return-
 ‘ able the day of the return of the
 ‘ said first *capias*, with pain and pro-
 ‘ clamations thereupon, at someone such
 ‘ time and court as is prescribed for
 ‘ the proclamation upon the said first
 ‘ *capias* with pain; and if such pro-
 ‘ clamations be not made in the county
 ‘ where the offender shall be most com-
 ‘ monly resident; in such cases of ad-
 ‘ dition of *nuper*, that then such of-
 ‘ fenders shall sustain no pain or for-
 ‘ feitures by virtue of this statute, for
 ‘ not yielding his or her body, accord-
 ‘ ing to the tenor aforementioned;
 ‘ any thing before specified, and to the
 ‘ contrary thereof, in any wise notwith-
 ‘ standing.’

Of

INTRODUCTION.

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Of Excommunications in general ; with the Method of Practice, as now received and used in the Ecclesiastical Courts, in order to know how to prevent the same ; as also the proper means to be discharged therefrom.

HAVING herein before set forth the statute in part, of the 5th of queen *Eliz. cap. 23.* intituled, *An act for the due execution of the writ de excommunicato capiendo*, being an amendment of the former act made 1 Hen. 5. to shew the just power and authority the ecclesiastical courts have given them by the laws and customs of this realm, in all cases of contempt of their jurisdiction, which would otherwise be fruitless in their original design and institution, to correct vice and immorality, destructive both to church and state, &c.

I shall now therefore proceed herein to give,

1. Some necessary rules of practice, to be observed upon appearing in court for the party cited, upon the return of any process, in order to shew the steps necessary to be taken, in conducting the suit regularly throughout, to the pro-

promulging of a definitive sentence therein inclusive, to avoid an excommunication. And.

2. In appearing for the party cited when excommunicated and imprisoned thereupon by a writ *de excommunicato capiendo*, the proper means then also to be used and taken thereupon, thro' all its various incidents, for the benefit of the client, to get his discharge therefrom, as well in the secular as spiritual courts, together with some observations on the foregoing statute.

Persons excommunicated.

Persons excommunicated disabled to sue in his majesty's courts.

1. **A** Person excommunicated is forthwith disabled to sue in any of his majesty's courts; not that thereby he loses his right for ever; but the excommunication may be pleaded in abatement of his present action, till the same is taken off by an absolution. yet note, that whosoever is instrumental in procuring, decreeing and pronouncing the excommunication, shall never be allowed to plead it, nor shall it be pleaded, unless the excommunication be signified by the bishop himself; for the court will receive no certificate from any to whom they cannot write to absolve the person, if they find cause.

2. Like-

2. Likewise, though a person excommunicated may be appointed an executor, and is capable of having a legacy given him, yet so long as he stands excommunicated, he is not allowed to prove the will, nor sue for the legacy in the spiritual court. But note, some are of opinion, though a very vulgar error, that a man excommunicated cannot marry, whereas marriage is allowed of, it being *de jure naturali*; and alike absurd it is, to pretend that such a person cannot give his suffrage in any election; as for example, of parliament men; the law allowing him a vote, so long as he hath a freehold of 40 s. per annum.

May be an executor.

And may marry.

May vote for a member of parliament.

If any person excommunicated continue so by the space of forty days, then by the common law, the bishop certifying the same into chancery (which is called a *significavit*) there shall issue forth a writ from thence to the sheriff of the county where the party lives, to imprison him without bail, or mainprize, till he hath made satisfaction to the church. This is called a writ *de excommunicato capiendo*, but at the common law, the same writ being not returnable in any court, the sheriffs took their own time, and used their discretion in executing it; to enforce which

I N T R O D U C T I O N.

which the aforefaid statute was made,
whereby it is enacted,

I. That the faid writ fhall be returnable in the king's bench, yet the fheriff need not to bring thither the body.

II. If the fheriff return *non est inventus*, a *capias* fhall be awarded, with proclamation, to come in within fix days; if the party does not, he forfeits 10 *l.* and thenceforwards, *capias* after *capias*, and 20 *l.* forfeited on each.

III. But note, there are two cafes in which a man ftanding out ever fo many proclamations, he fhall forfeit nothing, and they two are thefe.

I. Where the party againft whom the writ *de excommunicato capiendo* is awarded, hath not therein a fufficient and lawful addition; that is (faith *Cowell*) a title over and above his christian and furname, fhewing his ftate, degree, trade, occupation or myftery, (as lord, knight, gentleman, yeoman, clothier, and the like) and the hamlet, town, parifh, and county, where he is or lately was converfant and dwelling; and if it be with a *nuper*,

per [late of such a place] then you see there must be made out one *capias*, without a penalty.

2. Where it is not expressed in the bishop's certificate, that the cause for which the party was originally cited into the spiritual court, was for one of these ten causes following, *viz.* 1. Heresy. 2. Refusing to have children baptized. 3. Refusing to receive the communion. 4. Refusing to come to divine service. 5. Error in religion, or doctrine. 6. Incontinency. 7. Usury. 8. Simony. 9. Perjury in the ecclesiastical courts. Or, 10. Idolatry.

To know whether there be such cause, or any other expressed, you may have a copy of the *significavit* at the curfitor's office in *Chancery Lane*.

Then in either of these cases, all pains and forfeitures limited by the statute, by reason of such writ of *excommunicato capiendo*, wanting such an addition, or *significavit*, in all the causes aforesaid, shall be utterly void in law, and by way of plea to be allowed to the party grieved.

Rules of Practice.

PERSONS are usually excommunicated upon contempt or contumacy, which may be.

1. If the party being duly cited, denieth or omitteth to appear; for if he be not personally cited, he need not to appear the first court-day, but then the next step is to cite him by a process, called *viis & modis*, affixed to the doors of the late dwelling-house, or parish church, wherein the party is or late was a parishioner, under seal for some short time, citing him to appear on a day certain, to answer, &c. but (being personally cited) if he doth not appear the first court-day, or whether he be or no, if he doth not appear the second court-day, he is excommunicated for contempt; if he be cited generally, the law is, that he shall appear the third day after the service of the citation, if the party be not far from town, but if at a great many miles distance, or abroad then a citation, or else a *viis & modis* is to be executed on one of the pillars of the royal Exchange, *tempore mercatorum illuc confluentium*, or at the time of change hours, by affixing the original under seal

Seal thereon for some time, and leaving a true copy in the place thereof, and the party therein cited is generally to appear the sixth day after service, if it be a court-day, otherwise the court-day then next following; and if the said party doth not then appear, the certificate is continued to the second court-day thereafter following, and in contempt thereof is decreed excommunicated: and further, the rule is in law, *totus dies debetur delinquenti*. It is enough for a person to appear any hour of the day (provided it be a court hour) wherein he is cited to appear; so as though he be called before he comes, yet if he appeareth that day he shall be discharged, or he may appeal within fifteen days, and bring an inhibition to stop their proceedings against him.

2 When he appeareth he shall demand his charge, which is either by a presentment from church-wardens, or by a libel, or by articles which are exhibited by a promotor; be it which it will, he shall demand a copy. If it be denied or delayed, he may pray to be dismissed with costs, or may appeal, if refused; or bring a prohibition from the king's court at *Westminster*, forbidding them to proceed in that cause, till they have given a full and true copy of the charge according to the statute (a) 2 Hen. 5.

3. If cap. 3.

3. If he appeareth in person, he ought to have his charge the first court-day; if he appeareth by a proctor, the court then generally gives to the second court-day, to bring in the libel or articles.

4. If they deliver him not his charge the second court-day, he may appeal, if upon this demand the judge will not dismiss him; or he may bring his prohibition for want of articles and stop their further proceedings.

5. If the proceedings be upon a promotion, and the promotor hath employed a proctor in the case, the party accused must know that no proctor can be admitted without a proxy, that is, letters procuratory under the promotor's hand and seal, authorizing him to act for him in the case; and when he hath that, there must be an act entred in court to admit such a person proctor in the case; the party charged may go, or send to the register and demand a sight of both those; the reason in law is this, because any proctor is liable to the party's action, if he molesteth any person in the name of another, without any authority from him. And secondly, if there be no act of court, admitting him as a proctor, though the party accused be conqueror in the case, yet he cannot recover costs, because

because there is no legal adversary against whom they can be recovered.

6. According to the statute law, every informer, if overthrown, shall pay charges. According to the civil and canon law, none ought to be admitted as a voluntary promotor, till he hath given security to pay the charges. If overthrown, the party accused therefore shall before he answereth the articles, demand this; if it be denied by the judge, he may appeal to the superior court. It is also worth the person's inquiry, who is accused, to be well advised, whether the promotor in the ecclesiastical courts be not obliged to all those things that an informer in a secular court is tyed to by the statutes. (b)

(b) 31 Eliz. 5.

18 Eliz. 5.

21 Jac. 4.

The reason is, because these statutes say, informers upon penal statutes, and commonly promotors in the ecclesiastical courts, say such and such things are done contrary to the statutes of this realm, as well as contrary to the canons: now what things the statutes, which also name promotors, require of such informers and promotors, the statutes do declare.

7. When the party accuseth hath a copy of his libel, let him pray time to answer; if the judge denies him time (at least till the next court-day)

let

let him appeal. Having due time granted, in the mean while, let him duly consider the matter and form of his libel; as to which, let him (amongst other things) observe these that follow.

1. Whether the matters he be charged with, belong to the cognizance of the ecclesiastical court; if not, let that be his answer, and let him appeal or bring his prohibition, which lies in all such cases.

2. Whether they have put into the libel the promotor's petition for right and justice to be done him; it is often times left out, though it is a rule in law, *libellus est ipso jure nullus, ubi nihil petitur*. If he finds that this is wanting, let his answer only be, that the libel is in law utterly void and insufficient, and pray to be dismissed therefrom; if the judge refuseth to dismiss him, let him appeal.

3. Let him also observe, whether he be in the articles laid to be one of the diocese, or a parishioner of such a parish; for if it be not laid, it can never be proved, and so the promotor must fail in his suit; for what is not laid cannot be proved, it being a maxim in the civil law, *quicquid deponitur extra articulum, deponitur extra legem*. If he be said to be a parishioner of such a place

place, without such a diocese, let him not in his answer confess it, but say, he cannot determine bounds of dioceses and parishes; but for that he referreth himself to the law.

4. Let him also observe, if the things he be charged to have done or omitted, be within the compass of a year, and whether there hath been since an act of grace or oblivion, which hath pardoned them, and whether they be not such things as he hath been punished for, or such things as the statute law hath limited the prosecution of, to a less time than a year; for if any of these things be, they may be given in answer, to avoid either the whole or any part of the charge. If the judge will not accept the answer, the party may sue out a prohibition and stop them.

5. Let him also observe whether he be charged certainly, or particularly, as to time and place, or only generally and incertainly; if he be charged only generally, as for the most part is, in church-wardens presentments, not mentioning time and place; or incertainly, with or's, that he did not come to his parish church such and such months and days, or was absent in some one, or more, or most of them; let his answer be, that this charge is void in
law

law, for the generality or incertainty. If the judge will not receive his answer, let him appeal; for the law of *England* alloweth no such charges from which there can be no discharge, or where the crime is not fixed to a certain time, but it may be, in this case, a prohibition will be his best remedy.

6. Let him observe whether he be charged only upon statute law, or upon canon; if upon canon let him refer himself in his answer to a person learned in the statute laws, whether any such canons were ever enacted, ratified, allowed or confirmed by parliament, or by the established laws of this land, as they stood in the year 1639, and if not, whether they be not made void by the statute of 13 *Car. 2.*

7. When he hath given his answer, which must be subscribed by his own hand, it is usual for the adverse proctor to pray a time to prove his articles, for which the judge, at his pleasure, granted a term probatory. Let him also at the same time move that he may have liberty within that time also to produce any witnesses for his defence, if it be denied, let him appeal.

8. Let him observe what time the proctor produces his witnesses in court

court, in order to pray the usual time for interrogatories, to cross-examine them, if he pleases, and whom he names for witnesses for him: and let him also desire a time to be set in court, for him to produce his witnesses, and be careful to bring them at the time; for they must all be sworn in the court, then examined privately by the register, unless the adversary desireth a commission to examine witnesses, which is not often done, because it is much more chargeable in that case. There are no witnesses in the court produced and sworn, but before those commissioners.

9. The party defendant may deliver in to the register interrogatories, upon which the register shall cross-examine his adversary's witnesses; but he must be very wary as to this, for he shall not afterward except against any of his adversary's witnesses, whom he hath cross-examined, and made witnesses for himself.

10. Let him advise his own witnesses to be very careful that the register setteth down what they say in their own words, that under the pretence of putting them into a decent style, their whole sense be not altered.

11. When the term probatory set at first by the judge, is expired, let him

C

desire

desire of the judge publication; if the judge will grant longer time to prove, let him desire the advantage of the same time also, to bring more witnesses for himself, which he may or may not make use of, as he pleases. If once the term given for proof be expired, let him desire publication and liberty to take out a copy of the depositions.

12. When he has got a copy thereof, let him diligently observe if he can prove any thing contrary to what the witnesses, or any of them, have sworn; if he can, let him at the next court-day give in an exceptive allegation, and pray the same to be admitted, shewing the particulars, which he excepted against in their depositions severally, as well as his general exceptions against them all. Let him desire time to bring in witnesses to prove the same; if the judge refuseth to admit such his exceptive allegation, or to give him due time to prove the same, he may appeal therefrom.

13. If once the promotor is allowed to have publication, he may again move for time to invalidate the proof of the exceptions, but not to fortify his first proof; if any liberty of that nature be desired the defendant may appeal; for unless in a case
for

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for the king, after publication, no new witnesses can be produced.

14. When the party against whom the promotion is, peruseth the deposition, let him strictly observe whether the particulars he is charged with be proved by two witnesses; for it is a rule in law, *vox unius est vox nullius*, and if the judge will admit the thing proved by one witness, a prohibition lies; for the king's judges will not only see that those courts shall keep to matters truly belonging to their jurisdiction; but also that in the prosecution of them, they shall keep to the received rules of their own law, in those main points of proof.

15. It is an usual thing upon pre-
 sentment by church-wardens, when the party presented calls for proof of the presentment, to tell them that the church-wardens presentment is a conviction, they being sworn officers; but this is contrary to the law of England, which alloweth no presentment by officers *ex officio*, to be a conviction. If grand juries at assizes and sessions do present, this is no conviction; but the person after this must be indicted, and proof made by witnesses. If therefore the ecclesiastical court insists on this, the person may appeal, or (which it may be better) he may have

No Presentment is good Conviction, without Proof, Publica vox & fama being not sufficient alone.

C 2 a prohibition

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a prohibition from the king's court at *Westminster*.

16. When the time for proof is expired and publication made, and exceptions given in and proved, and publication of those proofs also made, either party may move for a time to be set to conclude, and to give the judge information of the whole state and merit of the case, and also to give sentence in it.

17. At the day set, the party accused or promoted against may appear, and shew to the judge the whole state of the case, and plead it himself, or by an advocate; after which the judge will appoint a day to give sentence.

18. At that day the party must have a form of a definitive sentence ingrossed ready to present to the judge; if the judge give sentence against him, he may appeal within fifteen days, by virtue of the statute. (a)

(a) 24 Hen. 8.
c. 12.

19. During the prosecution, the person said against whom the prosecution is, shall do well after every court, to get the acts of the court in his case, under the register's hand, and to keep them by him carefully.

Rules

Rules and Instructions how to be discharged from the Writ de Excommunicato capiendo.

HAVING already premised, that no bail will be accepted of, nor will an *habeas corpus* avail you, (unless you have a mind only to change the prison) nor does a prohibition, *homine replegiando* lie: but the several ways to help (according as the case happens) are as followeth :

1. If the party imprisoned hath brought a prohibition, by which the ecclesiastical court hath been commanded to proceed no further, and to absolve the person, if excommunicated, and the judge hath disobeyed the writ, and signified and procured the party to be imprisoned, the person that is imprisoned, at any time in term, upon a motion, shall have first an attachment against the judge, and then a writ of *superfedeas* to the sheriff, to deliver the prisoner to follow the attachment, without any submission to the bishop at all, or any caution. Such writ may be found in the *Register of Writs*, p. 66. Nay if the attachment be granted, and the person be imprisoned, or a writ out commanding him to be taken, and the
term

term be done before the attachment can be served, the register tells us that he shall have the same writ, during the vacation, out of chancery; and it is the opinion of men skilled in the law, that he shall have such a *superfedeas*, upon affidavit made, that the proceedings are contrary to a prohibition served upon the judge, though no such attachment be taken out.

2. If the party imprisoned, or against whom the writ is to take him, though he be not taken, hath appealed according to the statute. (a)

(a) 24 Hen. 8.
12.

If he bringeth into the court of chancery an authentick copy of his appeal, he shall have a writ of *superfedeas* to stop the sheriff from apprehending him, or to deliver him, if he be apprehended, only this must be within a year after his appeal, that it may appear to the court he hath not deserted his appeal; you may find forms of such *superfedeas* also in the *Register of Writs*; both these are founded upon excellent reason. The law of *England* will not suffer ecclesiastical judges either to invade their right, or to exalt themselves against their authority, nor yet suffer inferior ecclesiastical courts to invade the right, power and authority of superior courts in their own order.

3. If

3. If a person be sued in the ecclesiastical courts for a matter not within their jurisdiction, and they have caught him upon contempt, in not appearing, or not obeying their sentence, upon a suggestion to the king's courts. If it appears to them, that the original matter was not cognisable in the ecclesiastical courts, they will *supersede* the proceedings, and order the imprisoned person to be discharged.

4. If the imprisoned person, or he against whom the writ is out, though he be not taken, bring a copy of the bishop's *significavit* into the courts at *Westminster*, and make it appear to the judges there, that the cause of excommunication is not therein expressed, together with the day when it was pronounced; if he be not said to be excommunicated *majori excommunicatione*; if it be not signed by the bishop, or said to be *authoritate nostrâ ordinariâ*; if the party excommunicated be not expressed by name, the court will deliver the person. Dr. *Cozens* mentions three of these cases, where you may also find them in the *Register of Writs*; the first, he saith, he cannot find in the *Register*, viz, That the articles or matter of the libel must be expressed, nor indeed do I find it there, but it is in several reports. The reasons are,

1. Because

1. Because the law will not suffer men to be imprisoned for every light offence. 2. Because the king's courts can receive *significavit* from none but the person to whom (if need be) they may write to discharge the prisoner; nor will the court suffer a person to be excommunicated, and lie in prison for a crime which the ecclesiastical court hath no judgment in, nor yet unless it appeareth to the court, he hath stood forty days excommunicated. Again, heretofore whole cities and communities have been excommunicated; therefore the person must be expressed by name, or he shall not lie there.

5. Let him procure a copy of the writ *de excommunicato capiendo*, and observe,

1. If it be issued in term-time.
2. If there were full twenty days between the *teste* and return.
3. If it be made returnable the next term.
4. If there be due additions on it.
5. If before it was delivered to the sheriff, it was entred upon record in the king's bench, and made returnable into that court.

All these things are required by the (a)5 Eliz. 23. statute (a). If any of these errors be found, he shall upon motion in the king's

king's bench be discharged, and the writ will be declared illegal.

Lastly, if he can be delivered by none of these ways, he may at any sealing in chancery, whether it be in term or out of term, upon a petition to, or motion made before the lord chancellor, have a writ *de cautione admittenda* granted him (in case he hath before offered the bishop a bond of 10*l.* or 20*l.* with sureties *stare & parere omnibus mandatis ecclesiæ in formâ juris*); when he hath it, let him by some proper person send it, and tender a bond and sufficient sureties with it to the bishop, and demand a discharge of the prisoner; if it be not presently done, let him certify so much, and at the next seal move for a second writ to the bishop, or (which it may be is more adviseable) let him move for a second writ to the sheriff (the form of it is in the *Register*) in that the king commandeth the sheriff to admonish the bishop to accept the caution, and to deliver the prisoner; and further commands him, that in case he doth not in his presence, the sheriff should do it himself. If the sheriff yields not obedience, upon another motion, he ought to have a writ to the coroner, commanding to take security of the sheriff to appear at *Westminster*

minster such a day, to shew reason why he hath contemned the king's writ; and further, it commandeth the coroner to take the caution of the prisoner, and to deliver him.

You may find all this in the *Register*, where are the forms of all these writs, and also in Dr. *Cozen's Apology*, p. 1. c. 2. who being himself a judge in the ecclesiastical courts, cannot be presumed to have told us any thing but what is law, contrary to their own interest. The defendant upon giving a cautionary bond to the ecclesiastical court, pays all the contumacy fees upon his discharge, which are more or less, as the cause is carried on, incidental to the excommunication.

But if the court will not accept the caution and discharge you, you may then have a second writ directed to the high sheriff, commanding him to go to the bishop, and require him to take the caution, and to deliver the prisoner, and require him to do it himself. If the bishop still refuse, and if the sheriff do not so, you may have a writ to the same purpose directed to the coroner to do it, as you may see in the *Register of Writs*, fol. 66 and 67; so careful were our ancestors for the liberty of the subjects persons. And hereby it appears that the court is bound

bound by law to take such caution, I mean by bond and sureties, and thereupon to absolve the person excommunicated, though he will not take an oath (as usual) *stare mandatis ecclesiæ*, i. e. to obey the commands of the church.

As for what shall be accounted such sufficient caution, the practice of the court requires in this behalf, the party himself with two friends, to be bound in a bond of 10*l.* (seldom more, or at most 20*l.*) to the bishop, conditioned that the party shall obey the commands of the church, as aforesaid.

Concerning the Management of Causes in the Prerogative Court of Canterbury.

THE judge of the prerogative court of *Canterbury* hath the power of granting the probates of all wills, and the committing of administrations of persons dying intestate within the province of *Canterbury*, having goods or any effects moveable or immoveable out of the diocese or peculiar jurisdiction wherein they die, amounting to the value of 5*l.* which are called *bona notabilia*.

What are Bona notabilia in London.

But

*And what are
such out of the
Diocese of Lon-
don.*

But by antient prescription in the diocese of *London*, the party so dying must have goods, as aforesaid, to the value of 10*l*, out of the diocese of *London*, to amount to *bona notabilia*.

In this court are commonly tried all causes of instance of proving and setting aside wills, whether at first and originally exhibited, or otherwise proved in common form, and of committing and revoking administrations in the cases aforesaid, either by the judge himself, or by the parties surreptitiously praying administration, by concealing the truth and suggesting of falsties, contrary to the form of law, and the statute in that case made and provided, or when ever after it appears from such probate or administration granted by a judge of any inferior diocese, that the grant thereof properly belonged to the judge of the prerogative court of *Canterbury* (the party dying leaving *bona notabilia* as aforesaid) therefore particular inquiry ought to be made thereof, otherwise the probate of the will or grant of administration is voidable *ob defectum jurisdictionis*, by any process issuing out against the party obtaining the same in that behalf.

Also all causes of temerary or rash administration of goods, and of rendering a just account thereof; as for instance,

stance, if any will be proved in common form, (which is by the sole oath of the executor) and there is any person living who has an interest in the administration of the goods of the said deceased, (supposing he died intestate) he may cite the executor thereof, to prove the said will by witnesses; and if the executor cannot sufficiently prove the same, as aforesaid, the court will then pronounce sentence in that case, that the deceased died intestate, and without making any will, and the probate thereof granted in common form as aforesaid, will be declared null and void to all intents and purposes in the law whatsoever.

If an executor, being an alien or no ways of kin, or related to the deceased by blood, hath the greatest part of the deceased's effects bequeathed to him, is the least apprehensive of the witnesses to the will being dead, that the widow, children, or the next of kin to the deceased may or shall afterwards commence any suit against him, concerning the validity of the will, he may, according to the rules of practice, cite the relict and children, as also the next of kin in special, and all others in general, having or pretending to have any right, title or interest in the will of the said deceased, or in the administration

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nistration of the goods of the said deceased, or in his personal estate, to see the said will propounded or proved by witnesses, and having made due proof thereof, to obtain a definitive sentence for the force and validity of the said will; so that never afterwards (unless some nullity doth appear in the proceedings) can such will be set aside, although in the mean while the witnesses thereto shall happen to dye.

When an executor hath been cited to propound or prove a will *per testes*, and hath sufficiently proved the same, if the plaintiff's proctor, who hath prayed the said will to be so proved by witnesses, and after publication of their depositions is passed, shall neither give any exception, plea, or allegation against the said will, nor against the witnesses, nor propound any matter or thing conclusive in law, to impede or delay the giving of sentence for the validity thereof, yet it is not practicable for the judge to condemn the party cast, in costs of suit, but the case is otherwise, where the party shall propound any matter, and fail in proof thereof, for then the party so cast shall be condemned in expences, at least from the time of propounding such matter as aforesaid.

Note,

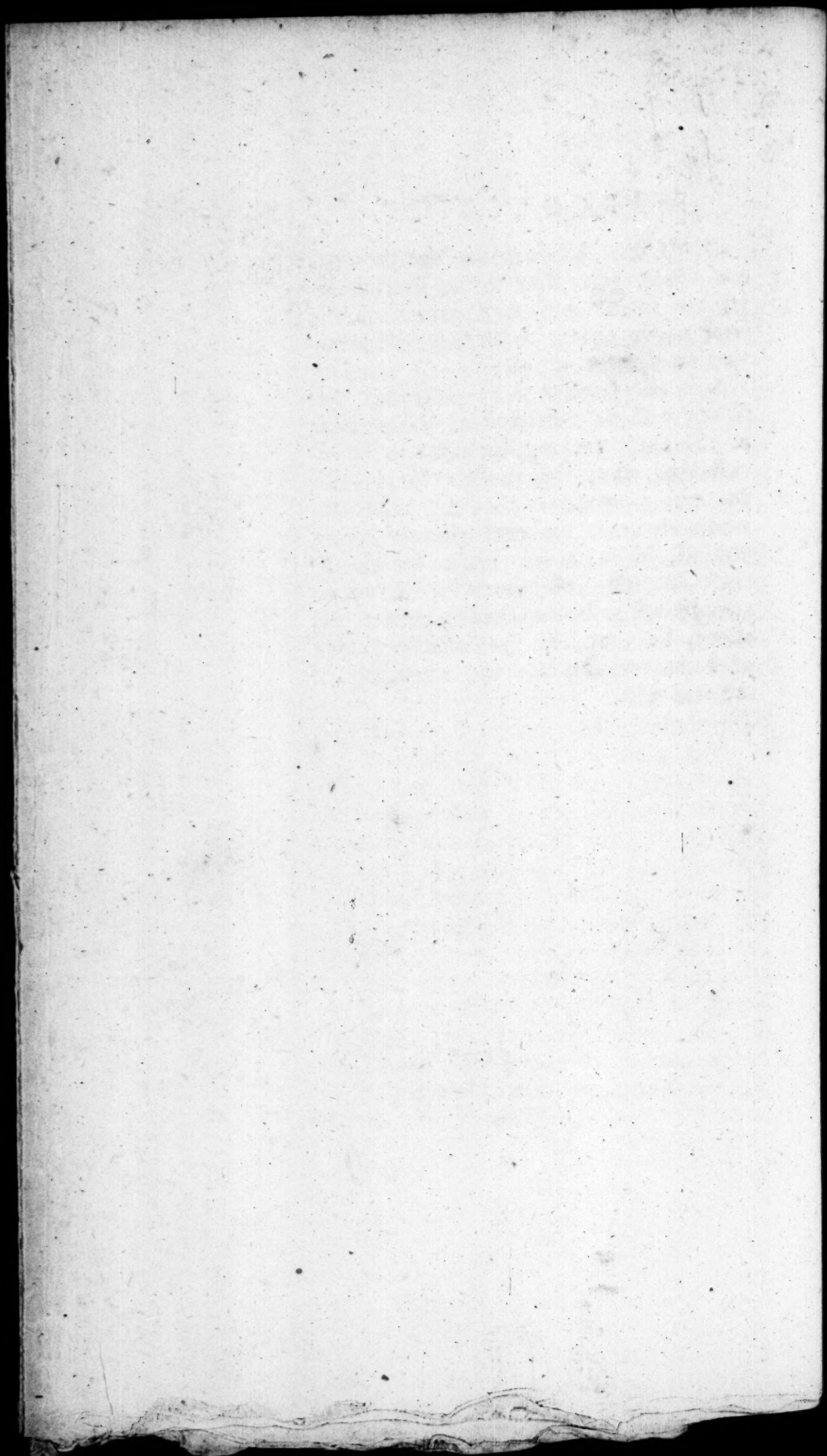
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Note, That all causes in the prerogative court, according to the style thereof, are called summary causes, as the same ought always to be summarily carried on therein.

It is also further to be observed, that if any will be exhibited at the petition of the party praying the same to be invalidated, that the proctor for his client who commences the suit, takes immediately the contents thereof upon himself, so far as they make for his client's interest, lest otherwise, if any legacy be left or bequeathed therein to his client, he may lose the same by reason of a general denial, and annulling of the said will.

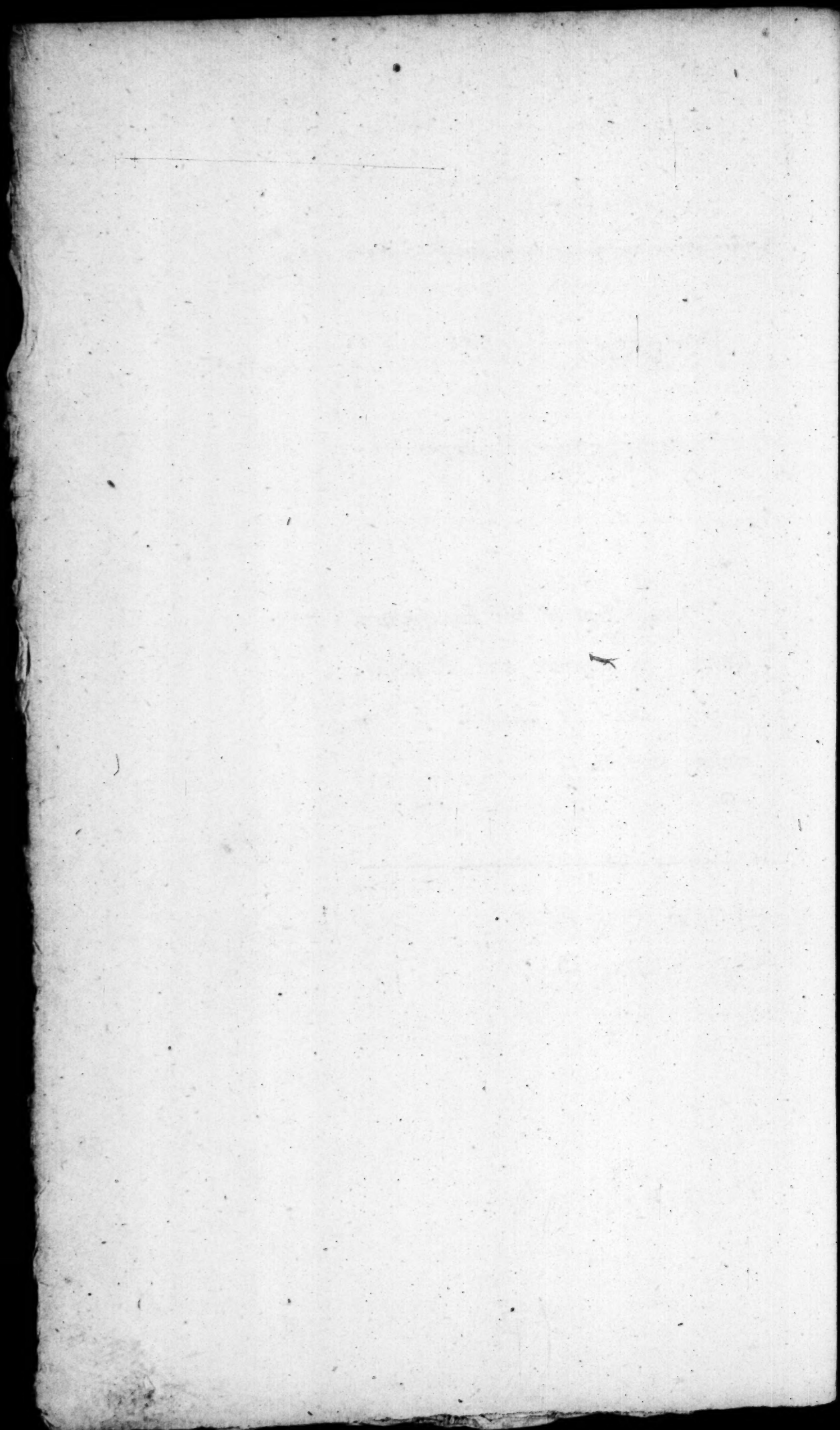
T H E. 2



PART I.

*Of the Jurisdiction of the Ecclesiastical
Courts, the Officers and Practisers
thereof, and the Methods of Pro-
ceeding therein.*

D



THE
Proctor's Practice
IN THE
Ecclesiastical Courts.

PART I.

Of the Jurisdiction of the Ecclesiastical Courts, the Officers and Practisers thereof, and the Methods of Proceeding therein.

CHAP. I.

Of the Court of Arches.

THE Court of Arches is so called, *Of the Arches*
because it was formerly held in *Court*,
the church of St. Mary le Bow (or
Sanctæ Mariæ de Arcubus) London; the
D 2 original

Of the Court of Arches.

original of it is very uncertain, being very ancient, and subsisted long before the year 1272, for *Alexander* the third, then bishop of *Rome* (*Temp. Hen. 2.*) *Its Antiquity.* did, by his edict to the dean of the Arches and *Robert Kilwarby* then archbishop of *Canterbury*, abrogate and abolish the then ancient statutes of this court, and set up others in their stead, and it was there said that the *then ancient statutes* were by length of time become illegible.

Judge, Dean of the Arches. The judge of this court is now, as formerly, called dean of the Arches, having jurisdiction over thirteen parishes in *London*, which are exempt from episcopal jurisdiction; he is to the archbishop as a chancellor is to a bishop (*1 Show. 251.*) The present dean is *John Bettefworth*, L.L.D. To this court *Officers of the Court.* belong diverse advocates, two registers, thirty-four proctors, besides supernumerary proctors, an apparitor general and his deputy.

Apparitor. The apparitor attends the court in a black gown, carries the mace before the judge, serves all processes, and is crier of the court. The apparitor general is *William Folkes*, Esq; his deputy is *William Thompson*, Gent. the registers are the said *William Folkes*, Esq; and *Edward Rushworth*, who are patentees for life.

The

Of the Court of Arches.

5

The advocates must have taken the *Advocates,*
degree of doctor of the civil law in
one of the universities before they can
be admitted here; and on petition to
the archbishop, and his *Fiat* obtained,
they are admitted by the judge on
condition that they practice not for
one whole year after admission (which
is called the silent year); they are ad-
mitted in the following form; the two
senior advocates in their scarlet robes *Form of their*
with the mace carried before them, *admission.*
conduct them up to the court with three
low bows, and present them with a
Latin speech, and produce a rescript
from the archbishop, and after taking
the oaths appointed to be taken instead
of the oaths of allegiance, &c. and
also the oaths to be taken by the sta-
tutes of this court, the judge admits
them, and assigns them seats in court,
on his right or left hand, which they
always keep when they plead. The
stamps of their admission are 6*l.* the *Fees of the*
other fees are 2*l.* 2*s.* *same.*

The proctors are admitted much af- *Proctors,*
ter the same manner, only are con- *their admission.*
ducted by two senior proctors to the
judge, and are allowed to practice im-
mediately after admission. Their fees
for admission are the same as the ad- *Fees of the*
vocates, but they usually treat the *same.*
whole

Of the Court of Arches.

whole profession upon their admission, which is very expensive to them.

Their habits.

The judge and advocates wear scarlet robes with hoods lined with taffety (if bred at *Oxford*) or white *Miniver* fur (if at *Cambridge*) and round black velvet caps. The proctors wear black *Prunella* gowns with hoods lined with fur in this court only, in other courts the doctors, &c. wear only black gowns.

*Offices.**Proceedings.*

All offices here are in the archbishop's gift. As to causes triable here, its official is the proper judge to take cognizance of all causes not only at the instance of parties, but also *ex mero officio, vel promoto*, as also all manner of appeals from all ecclesiastical courts within the province of *Canterbury* (except some peculiar jurisdictions belonging to the king) *vide Stat. 24 Hen. 8.* also all causes relating to benefices, also suits by letters of request from an inferior ordinary for want of able counsel to plead in an inferior court.

Vacancy of the Archbishop.

During the vacancy of the archiepiscopal see, the authority of the dean of the arches remains as before; but in the prerogative court processes issue in the name of the dean and chapter of *Canterbury* during the said vacancy.

The

Of the Court of Arches.

7

The court-days are reduced to four *Terms and Court-Days.*
terms in a year.

Hilary Term.

The 1st session of *Hill*. Term is the next after the feast of St. *Wolstan* the bishop (*viz.*) the 20th of *January*.

The 2d is the next day after the feast of St. *Paul* the apostle, the 26th of *January*.

The 3d is the next after the feast of St. *Blaze* the bishop, the 4th of *February*.

The 4th is the next after the feast of St. *Valentine* the bishop, the 15th of *February*.

Easter Term.

The 1st session of *Easter* term is the next after the feast of the passover.

The 2d and 3d are as the judge pleaseth.

The 4th is the next day after the ascension of our Lord *Jesus Christ*.

Trinity Term.

The 1st session of *Trinity* term is the next day after the feast of the holy and undivided *Trinity*.

The

Of the Court of Arches.

The 2d, 3d and 4th sometimes the next after the feast of St. *John* the baptist.

Michaelmas Term.

The 1st session of *Michaelmas* term is the 23d of *October*.

The 2d is the next after the feast of *All Souls*, The 3d of *November*.

The 3d is the next after the feast of St. *Martin* the bishop, the 12th of *November*.

The 4th is the next day after the feast of St. *Edmund* the king, the 21st of *November*.

The 5th is the next after St. *Andrew* the apostle, the 1st of *December*.

By-Days. After *Hilary*, *Trinity* and *Michaelmas* terms there are court days called by-days, generally appointed by the judge to be held within seven or eight days after term, and in one or more days before any session (except the first Arches court in *Easter* and *Trinity* terms) informations are had for the more easy expediting of causes after conclusion, and before sentence given, as also when the judge appoints to hear his pleasure on the petitions of proctors in causes, or upon the debating the admission of a plea by counsel. The court-

Of the Court of Arches.

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court-days in the other courts in *Doctors Commons* follow in order after any arches court-day or session.

A list of the Advocates who are all *Doc- Advocates*.
tors of Laws.

Sir Henry Penrice, Knt.
George Paul.
William Strahan.
Charles Pinfold.
John Audley.
Edward Kinaston.
John Andrew.
Sir Edmond Isham, Bart.
George Lee.
Thomas Walker.
Edward Simpson.
Charles Pinfold, Jun.
Henry Edmunds.
Robert Chapman.
Arthur Collier.
Robert Dale.
Thomas Salusbury.
Joseph Smith.
William Wall.
John Tayler.
George Hay.
Robert Jenner.
Andrew-Coltee Ducarel.

A List

Of the Court of Arches.

Proctors and those allowed to practise as such. A List of the Proctors and those allowed to practise as such.

Edward Alexander, Esq ;
 Mr. Robert Bogg, he does not reside or practise.
 Charles Garrett, not resident.
 Edward Greenly, Esq ; Proctor to the King.
 Mark Holman.
 George Hill, not resident.
 Sandfoord Nevile.
 John Searle.
 William White.
 Nathaniel Patten.
 Henry Collins.
 Everard Sayer.
 William Legard.
 Richard Cheslyn.
 Peter St. Eloy.
 John Phillips.
 Julius Cæsar.
 Robert Rous.
 William Skelton.
 William Strudwicke.
 John Lee.
 Robert Bogg, Jun.
 Henry Farrant.
 Arthur Zouch.
 John Aldridge.
 Philip Crespigny.
 Charles Alexander.
 Henry Stevens.

William

Of the Court of Arches.

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William Taverner.
Godfrey Lee Farrant.
Edward Rushworth.
Henry Major.
Thomas Shepherd.
Richard Watton.
Edward Busby.
Francis Llwydd.
Thomas Fanshawe.
John Trenley.
George Bellas.
George Gosling.
Thomas Welham.
Henry Grace.
John Bottrell.
Nathaniel Bishop.
John Smith.
John Colveen.
William Abbot.
Thomas Tyndall.
Roger Altham.
Philip Floyer.
Josias Farrar.
Robert Longdon.
Wright Bateman.
John Caesar.
John Barrett.
George Rous.
Charles St. Eloy, not resident.
Thomas Gyles.

You are to observe that there are *Impostors*:
impostors who pretend to transact bu-
siness,

Of the Court of Arches.

finess, such as hackney writers, and
 others that ply in the streets, like those
 who ask you (in the rules of the
Fleet) if you want a parson? Which
 scandalous practice in order to put a
 stop to, the judges and advocates at
 a meeting in commons, the 12th of
Novem. 1742, came to the following
 resolutions (*inter alia*) " That a proc-
 ' tor of the arches shall have no more
 ' than two entred clerks or writers,
 ' and every other practitioner, one
 ' only to dispatch business for them
 ' in their absence, and every such
 ' clerk or writer shall be entred by his
 ' master in a publick book to be kept
 ' in the severall publick offices for that
 ' purpose, and that the registers or
 ' their clerks in such publick offices
 ' shall not deliver any business out of
 ' their offices to any person (in order
 ' to pass the seal) but to those only as
 ' are known to belong to the office
 ' of a proctor or practitioner (as in the
 ' foregoing list); and that no proctor
 ' or practitioner shall be allowed to
 ' enter any writer as his servant, un-
 ' less such writer or servant be actually
 ' retained in his service, and writes for
 ' him at some certain office belonging
 ' to such proctor, &c. at certain
 ' wages: And that no writer in the
 ' prerogative office, (employed only in
 ' the

‘ the business of that office) be admitted as an entred writer or servant to any proctor, &c.

‘ And whereas it is highly injurious to the fair practitioner, as well as greatly to the dishonour of the profession, that any porters, menial servants, or other mean persons should be employed and encouraged by any gratuity or otherwise, to hawk or ply for business and clients: The said practice is hereby declared to be unwarrantable and infamous, and justly deserving of exemplary censure; and all proctors, &c. are strictly enjoined not to encourage or countenance such practice in any manner, but carefully to avoid all occasion of suspicion of the same in themselves, and to discourage and prevent the same as far as may be in all others.

*Signed by all the Judges and
Advocates.*

CHAP.

C H A P. II.

Of the Admiralty Court.

*Admiralty
court,*

Judge of.

Marshal.

IN the afternoon of the same day whereon the court of arches is held, the court of admiralty also sits for the decision of maritime controversies. The title of the judge is, Sir *Henry Penrice*, Knt. L. L. D. lieutenant of the high court of admiralty of *England*, and in the same court official principal and commissary general and special, and president and judge thereof, lawfully constituted. The processes run in the king's name, and are directed to *Philip Crespigny*, Gent: marshal of the high court, &c. or to his deputy whomsoever; sometimes they are directed to all vice-admirals, justices of the peace, mayors, sheriffs, bailiffs, constables, marshals and other officers and ministers of our sovereign lord the king, as well within the liberties as without. The marshal of this court has usually one or more deputies under him, who generally attends the court, and carries a silver oar before the judge to and from court; his deputy serves all the

the

the proceſſes iſſuing out of this court. There is a register and his deputy be- *Register and* longing to this court, at preſent Mr. *deputy.* *Samuel Hill* and Mr. *John Aldridge.* The lord high admiral or lords com- miſſioners for executing that office have here their advocate and proctor, and all other advocates and proctors are *Advocates,* preſented by them to the judge for ad- *Proctors.* miſſion.

All offices here are in the gift of the *Offices.* lord high admiral or lords, &c.

This court is held in the common *Court where* hall of *Doctors Commons,* though for- *held.* merly it was at St. *Margaret's Hill,* *Southwark;* the admiralty ſeſſion for trial of criminal cauſes (as murder at ſea, piracy, &c.) is, and for many years paſt has been, held at the ſeſſions-*house* *The ſeſſions.* in the *Old Baily.*

C H A P. III.

Of the Prerogative Court of
Canterbury.

*Prerogative
Court.*

*Bona nota-
bilis.*

THE next day after the sitting of the arches and admiralty courts is held the prerogative court of *Canterbury*, so called from the archbishop's having (*jure sua prerogativa*) a power throughout his whole province of granting probates of wills or letters of administration, (to intestates estates) where the deceased had *bona notabilia*, (*i. e.* goods in two dioceses to the value of five pounds) except where by composition between the metropolitan and bishop it is more; as in *London*, ten pounds, or if the party dies beyond sea. *Vide Can. 92, 93.* And in this place it will not be improper to shew what is or is not *bona notabilia*, and in what cases there may be two administrations granted.

*What is, and
what is not
bona notabi-
lis.*

If a man dies on a journey, the goods he has about him are not *bona notabilia*. If a man is bound to one in *London*, and the obligee dies intestate in *Devon*, and has the obligation about

about him, administration shall be granted by the Bishop of *Exeter*, where the obligation was at the Time of his death, and not by the Bishop of *London* where it was made.

If one has goods of five pounds value in one diocese, and a lease for years of the same value in another, these are *bona notabilia*.

If the deceased had debts on simple contract without specialty, they are *bona*, &c. where the debtor resides. 1 Rol. Abr. 909.

By the stat. 4 & 5 of *Ann. c. 16. sect. 26.* Wages due to persons for work done in any of his majesty's docks shall not be deemed *bona notabilia*, but the ordinary of the diocese shall grant probates or administrations.

Where one has goods solely in an inferior diocese, and the archbishop presuming he had *bona notabilia* grants administration, this is not void, for he has jurisdiction in all places within his province; but if it be granted by an inferior ordinary where there are *bona notabilia* this is meerly void.

If one dies having goods in *England* and *Ireland*, the archbishop of *Canterbury* shall grant administration of the goods in his province, and the archbishop of *Dublin* another for those in his; the same of *Canterbury* and *York*;

E

per

Of the Prerogative Court

per Hale. 2 Lev. 86. 1 Roll. Abr. 908. Hard. 216. Salk. 41. Dyer 305. Cro. Eliz. 719.

If one has two houses in several dioceses, and lives mostly at one, but sometimes goes to the other, and being there for a day or two dies, administration shall be granted by the bishop of this diocese, for he was commorant there, and not there as a traveller. *Salk. 37.*

Where one dies having goods in divers peculiars, the archbishop shall grant administration; for peculiars are excepted out of the ordinary's jurisdiction; *per Twisden and Wyndham. 1 Lev. 78.*

Style of the Judge.

The judge of this court is called master, keeper or commissary; all processes run in the archbishop's name, and in the vacancy of the see of *Canterbury* in the dean and chapter of *Canterbury's* names.

Judge of the Court.

John Bettefworth, doctor of laws, is also judge of this court.

Where held.

The court is held in the common hall in the afternoon, and in the dining room in the morning; formerly it was held in the consistory of *St. Paul's*.

Registers, and deputy registers.

Henry Seymour and *Thomas Bennet*, principal registers, *William Legard*, *Peter St. Eloy* and *Henry Stevens*, are the deputy registers, one of whom attends

attends the court, the other is constantly in the prerogative office to sign probates, administrations and copies of records, and the third is the cash-keeper and accountant to the principal registers.

The prerogative office, where all original wills and records of this court are kept, was formerly held in *Dean's Court* near *St. Paul's*, but now removed to great *Knight-Rider Street* to a handsome new building on the same side of the street with the college of Civilians, where for one shilling a person may see any will there, or have a copy of all, or a clause of any will for ten-pence per sheet, (each sheet containing ninety words) from the time of the rebellion of *Wat. Tyler* and *Jack Straw*, at which time many records were burnt in and about *London*.

The oldest will I find registered there is that of *Lewys Clifforth*, (or *Lewis Clifford*) made knight of the garter by king *Richard* the second, which is dated 17 Sep. 1404, and proved the fifth of December following. *Vide Cod. MS. vocat. March Qn. 7.*

There are six clerks under the deputy registers, who have each of them separate seats, and separate counties or parishes allotted to them to fill up probates, &c. for.

E 2

All

Of the Court of Delegates.

Offices.

All the offices here are also in the archbishop's gift.

C H A P. IV.

Of the Court of Delegates.

*Court of Delegates.**Judges.*

BUT the highest court of all is the court of delegates; so called, because the judges are delegated, and sit by force of the king's commission under the great seal, upon appeals to him in his high court of chancery. These judges are either lords spiritual or temporal, or both, and commonly one or more justices of the king's bench, common pleas, or one of the barons of the exchequer, and one or more doctors of the civil law.

The proceedings run in the king's name.

Register and Deputy.

Here is a register and a deputy; Mr. *Samuel Hill* is principal register, and Mr. *Edward Rushworth* is the deputy register.

Court where held.

The court is held in the dining-room of *Doctors Commons* the day after the prerogative; but when sentence

Of the Court of Delegates.

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tence is given, it is held in *Serjeants Inn Hall in Chancery-Lane.*

Appeals to this court are obtained in three cases. 1. From a decree, &c. *Appeals in what cases.* or grievance in any of the archbishop's courts. 2. From places exempt, or peculiars belonging to the king or archbishop. And 3. From the court of admiralty. *Wood's Inst.* 505.

The manner of obtaining them is *How obtained.* thus: The proctor of the appellant draws the commission, which he must present to a master in chancery, with the instrument of appeal, (if it was made extrajudicial, otherwise a copy of the act drawn under the register's hand) to which the master puts his hand, and then it passes the great seal; afterwards the same being exhibited to two or more of the commissioners, they proceed thereon.

No appeal lies beyond this court except to the house of lords; but on a petition to the king in council a commission of review may be granted under *Commission of Review.* the great seal, appointing new judges, or adding more to the former judges, to revise, review and rehear the cause.

C H A P. V.

Of the College of Civilians, or
Doctors Commons.

ALL these courts (except the delegates when sentence is given, as before mentioned) are held in the hall belonging to the college of Civilians, which was purchased by Dr. *Hen. Harvey*, dean of the arches, for the professors of the civil law in *London*; here the judges and advocates commonly reside, and in term-time dine together in commons on every arches court-day: It was formerly (as it is now) known by the name of *Doctors Commons*, and stood near to the place where it now stands in the parish of St. *Benedict Paul's Wharf*; it was burnt down in the fire of *London*; after which the doctors removed to *Exeter* house in the *Strand* till the year 1672. when it was rebuilt in a splendid manner at the charge of the profession.

There

Of the Consistory Court.

23

There is a good library for the use *The library.* of the profession, which still increases, as every new consecrated bishop of late years gives 20*l.* to be laid out in books for the said library, instead of a treat to the profession.

The porter of the college (*Peter Librarian. Powell*) has the care of it.

There are other courts held here, as the court of peculiars, (whose com- *Peculiars.* missary is Dr. *John Bettefworth*) where there are certain parishes exempt from episcopal jurisdiction, and are peculiarly belonging to the archbishop of *Canterbury*, in whose province there are fifty-seven such.

C H A P. VI.

Of the Consistory Court.

THE bishop of *London* has here his consistory court to hear causes *Consistory of London.* within the diocese; he has his chancellor, *i. e.* his vicar general and official principal (at present Dr. *John Andrew*) and also his commissary, who *Commissary.* is Dr. *Bettefworth*) whose business is to grant probates, &c. of persons dying in

Of the Consistory Court.

in the city of *London* and suburbs thereof, as also within the deanries of *Middlesex* and *Barking*.

Register.

Mr. *William Skelton* is the bishop's register.

CHAP. VII.

Of the Court of the Dean and Chapter of *St. Paul's*.

*Dean and
Chapter of St.
Paul's.*

THE dean and chapter of *St. Paul's* have their court here, which is held in *St. Paul's*. Dr. *Edward Kington* is commissary general thereof, *Edward Alexander* register.

CHAP.

C H A P. VIII.

Of the Court of the Archdeacon
of Middlesex.

THE archdeacon of *Middlesex* has *Archdeacon of*
also his court, which is held in *Middlesex*.
St. Clement Danes church. Sir Henry
Penrice, knt. LL. D. is the official prin-
cipal thereof, as is *Edward Stanley*,
esq; LL. B. to that of *London*. *Of London.*

Mr. *Roger Altham* is register of these
two courts.

C H A P. IX.

Of the Court of the Dean and
Chapter of Westminster.

THE dean and chapter of *Westminster* *Dean and*
have their court, which is held in *Chapter of*
Westminster Abbey. Dr. *Charles Pinfold* *Westminster.*
is commissary, Mr. *Altham* is register.

C H A P.

C H A P. X.

Of the Surrey Court.

Surrey court. **T**HERE is also a court for the parts of Surrey, adjoining to *London* and *Westminster*. Dr. *Charles Pinfold* is commissary, Mr. *Richard Cheslyn* is register.

C H A P. XI.

Of other Ecclesiastical Courts in the Kingdom.

Of other ecclesiastical courts and judges. **T**HERE are several other ecclesiastical courts in this kingdom, the judges of which are archbishops, bishops, deans and chapters, archdeacons, and some prebendaries, or vicars general, chancellors, commissaries, and officials appointed by them, and the proceedings are in their names, tho'

tho' they are the king's courts. Their jurisdiction consist in visiting churches, *Their jurisdiction.* the clergy and churchwardens of several parishes or districts, in granting sequestrations, institutions and inductions, licences and dispensations, ordering real compositions, granting probates and administrations, in hearing causes against persons for not frequenting divine service or sacrament, against ministers for neglect of duty, against disturbers of divine service, against persons for laying violent hands on a clerk; also causes of contract of marriage, jactitation, alimony, divorces, restitution of conjugal rites, subtraction of tithes, legacy, *modus*, oblations, obventions, mortuaries, pensions, procurations, synodals, fees of judges, registers, proctors and apparitors; all causes of dilapidations, rights to seats, repairs and rates of churches, bounds of church-yards and parishes, (if they come in question in a spiritual matter) suits concerning inventories and accounts of executors, administrators and church-wardens, simony, adultery, fornication, defamation, election of parish clerks and church-wardens. They can punish persons in a cause of contempt for tearing a process, or abusing an apparitor as well as at the common law. They can give sen-

Of other Ecclesiastical Courts, &c.

sentence for tithes for rakings tho' never so involuntarily left, which the courts of law will not allow of; *per Twisden. Mod. Rep. 121.* They may hold a plea of a thing prohibited by a statute upon a penalty, so as they proceed not on the penalty. *2 Lev. 222. Corey v. Pepper.* They have power to judge of conditions where legacies are given upon conditions. *2 Roll. Abr. 299, 300.* The cognizance of ways for carrying tythes belongs to them, tho' it is by prescription only. *Godolph. Abr. 354.* They have the sole jurisdiction in all cases of deprivation, resignation, &c. *Degge of Tithes 101.* Where the original is of spiritual cognizance they may try incidents which are temporal, but there they must judge according to common law; *aliter* prohibition lies even after sentence. *2 Roll. Abr. 306. Salk. 547. Hob. 296.* The statute of limitations *21 Jac. 1. c. 16.* does not extend to them, but only to actions suable in the king's courts. *Hill. 1 W. & M. Shotter vers. Friend, Carth. 143.*

C H A P. XII.

The Method of Proceeding in Ecclesiastical Causes.

THE method of proceeding in causes *Method of*
ecclesiastical is either plenarily or *proceeding in*
summarily; the first requires a solemn *plenary causes.*
order in the proceedings, as the con-
testation of suit; assignation to pro-
pound all things, to conclude, and
without conclusion all proceedings are
null. The other requires a shorter *In summary*
proceeding, *absque strepitu judicii et de* *causes.*
simplici et plano. All causes in the pre-
rogative court are summary, and here *What are sum-*
contestation of suit, terms to pro- *mary.*
pound and to conclude, are not re-
quired. All causes of legacy, defa- *What plenary.*
mation, divorce, dilapidation, jacti-
tation, subtraction of pensions, &c.
simony (at the instance of a party)
all causes of correction, (of the mere
office, or voluntarily promoted) laying
violent hands on a clerk, impediment
of marriage, seat causes, are plenary;
and if any one proceed summarily in
these

The Method of Proceeding

*What things
are most mate-
rial in a
Cause.*

*What other
things occur in
a cause.*

*Causes of office
and instance.*

these causes, as without contestation of suit, &c. all the proceedings are null; but in summary causes, if one proceed plenarily, the proceedings are the more valid; *quod nota*. The most material things in a cause are the *contestatio litis*, the proofs and the sentence: As to the first, the citation, certificate, constitution of a proctor, giving the libel, precede it; the answers of the party, and the giving of a term probatory follow it. As to the second, proofs are made either by the parties answers or witnesses, (in which are observed production, examination, publication and exceptions) or by instruments (in which occur the exhibiting proof by exceptions and comparisons). Thirdly, a term to propound all things, (in plenary causes) and to hear sentence on the first assignation (in summary causes) and to conclude, precede the sentence; the execution, and taxation of expences follow. There are other matters occur in some parts of the cause, *viz.* contempt, excommunication, absolution, sequestration, oaths, &c. All or either causes of office or instance; the first are of the mere office or promoted, and are for a crime committed or suspected. When the proceedings are of the mere office, the judge proceeds against a person at the

the petition or accusation of another, and then the cause is described [the office of the judge promoted against *C. D.*] when promoted, as if a person voluntarily promotes the office of the judge, and calls the delinquent to answer articles, &c. then it is described [the office of the judge promoted by *A. B.* against *C. D.*] All causes of correction *ex officio mero* are summary *Of correction.* causes; *aliter* where there is a voluntary promoter assigned.

Having treated already of the nature and offices of the several courts, and of the causes triable therein, I shall now proceed to the second part.

PART II.

[illegible]

И Т Я А 9

P A R T II.

A Collection of Modern Rules of
Practice and Cases adjudg'd in
the Courts of *Doctors Commons*,
(never before published) di-
gested under their proper heads
in Alphabetical order.

F

PART II

A Collection of Modern Rules of
Practice and Cases relative to
the Courts of Deeds
never before published
with notes and proper forms
in alphabetical order

PART II.

A Collection of Modern Rules of Practice and Cases adjudged in the Courts of Doctors Commons (never before published) digested under their proper heads in Alphabetical order.

Abatement.

IF the client dies *post litis contestati-* *Of Abatement*
onem, the proctor continues till sentence; *aliter* if before; and in case of the death of the party, against whom sentence has been read, the executor shall be cited to shew cause why such sentence should not be put in execution: but in cases of defamation, or other personal action, the suit shall abate on the death of either party. See 2 Cro. 483. 1 Leon. 117, 178. 1 Lev. 6. 1 Vent. 133. *Pollexfen v. Pollexfen.*

Absolution.

Of Absolution. **A** Person taken by an *excommunicato capiendo* shall not be absolved till he has paid the contumacy fees, and also the fees of the *significavit*, the writ, sheriff's attornies, and other fees necessary in obtaining that writ, and then the judge restores him, and signifies his absolution for obtaining the writ *pro corporis deliberatione*. Gibson 1107. In contract causes the party excommunicated for not solemnizing marriage according to sentence, may be absolved on giving security to obey the commands of his ordinary, &c. tho' in other cases he shall first obey before absolution.

If one appears, and is excommunicated for not answering to a libel, (a copy of which is refused, or has not been given him) he shall upon a prohibition be absolved without taking the oath *Meius parendi mandatis ecclesie*; but if no appearance, he shall not be absolved without that oath. 1 Sid. 232. *Scurr v. Burrell*. 1 Vent. 5. 1 Sid. 403. If persons excommunicated be absolved, and have taken that oath *de parendo*,

Accounts.

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parendo, &c. and shall be excommunicated again *in non parendo, &c.* they shall be proceeded against in a cause of perjury.

Accounts.

AN Account must be passed before the same judge, or his surrogate or successor that grants the administration; as if *A. B.* the official of any archdeaconry grants an administration, the account must be passed before him, his surrogate or successor, and not before any chancellor of a diocese *tempore inhibitionis*; per Dr. Bettesworth. *Of Accounts.*

In causes of account the single oath of the accountant shall discharge him of all sums by him expended, not exceeding forty shillings; he shall be allowed his expences in secular courts, over and above such costs as were allowed there. Funeral expences, according to the degree and quality of the deceased, are to be allowed out of his goods before any debts or duties whatsoever. *Godolph. Abr. fol. 86. sect. 11. 3 Inst. 97.* Tho' for strictness no funeral expences are allowable against a creditor, except for the coffin, ringing the bell, parson,

parson, clerk, and bearers fees, but not for palls or ornaments. *Per Holt*, 1 *Salk.* 296, *Shlleey's* case. An administrator called to account at the promotion of a party is bound to exhibit an inventory, (but not under protestation of adding, &c. as in common form) tho' he had exhibited one before. He may have a decree against the plaintiff in special, and all others in general having interest, to see the account passed and distribution made, Since the 22d of *Charles II.* an administrator is bound to account without citation, and a person entitled, to distribution by that statute may sue the administrator to prove his account. *Salk.* 315, *Archbishop of Canterbury, v. Wills.* *Noy* 78. 2 *Inst.* 6. *Tho. Raymond's Rep.* 407. One witness to prove the sealing of a bond, and one to prove payment, with the oath of the party, is good proof in accounts. A party praying an account, having an interest, is not to be condemned in costs, unless he objects thereto and fails in his proof; tho' in this case such exact proof is not required as in other causes, therefore a shop-book is admitted as evidence. Executors, where the residue is not bequeathed, and who have a particular legacy given for their pains, and are there-

therefore called nude executors, are liable to be called to account, and distribute.

If an administration be granted to *A.* who has no right, and is afterwards repealed and granted to *B.* who has right, *B.* shall sue *A.* to account for the profits in his time in these courts, for there's no other remedy. *Godolph.* 125. *sect.* 32. The executors or administrators of any guardian may be cited to account by the Stat. 4 & 5 *Ann.* An account passed in the minority of a person interested is void against the infant. *Fitz. Nat. Brev.* 118. *Account.* 1 *Brownl.* 25. Administration during minority is repealed, and another is made administrator during, &c. and the second administrator draws the first to account, and gives him a release, yet the infant at his full age may compel the first administrator to account again. 1 *Roll. Abr.* 910. Stat. 22. & 23 *Car.* 2. c. 10. 1. *Jac.* 2. c. 17.

Parishioners cannot bring an action of account against their church-wardens, but they may make other church-wardens, and they shall have it against their predecessors. *Lilly's Reg.* 22.

Actions.

Of Actions.

THE Law allows not of many actions for the same matter, according to the received maxim in law, *Nemo bis puniri debet pro eodem delicto.* Action lies against an ordinary for placing one in a seat in an isle belonging to another, or against any one for a disturbance in a seat in a church, for dilapidations, * Simony, laying violent hands on a clergyman; (and the reason why this is suable here is, because the clerk having *habitus et tonsuram*, which made him known, it was an offence to the whole order. *Godolphin's Rep.* 115. *Gibson* 10. 2 *Inst.* 492, 608. 1 *Cro.* 753. 13 *Edw.* 1. *Reform. Leg.* 125. 12 *Co.* 99.) It lies against one for quarrelling in a church, for adultery, fornication, absence from church, non-payment of a rate for the repairs of a church, or for books for the church, or for subtraction of legacies left to pious uses [in which last case the judge may proceed against the executor of his mere office, or at the promotion of the church-wardens of the parish to whose poor the legacy was left.] It lies

Vide Lindw.
de Testam.
ita quorundam
verb.
pias causas.

lies for hindering the execution of a will, or making of an inventory (the punishment of which is excommunication, as in a cause of temerary administration) *Fitz. Nat. Brev.* 98. So for subtraction of procurations or synodals by a rector, &c. from his bishop or archdeacon, for subtraction of an annual pension going out of a church, &c. So for uttering reproachful words, (though not defamatory) denoting any crime out of an angry and malicious mind, for which no action lies at common law, which is called here defamation, for a suit lies not here for words charging an offence not punishable here; and in words defamatory malice is presumed, in words reproachful must be proved. *Salk.* 692. Suit lies here for proctor's fees. See 4 *Mod.* 254. 5 *Mod.* 238. 1 *Vent.* 165. 1 *Salk.* 333. 1 *Roll. Rep.* 59. 1 *Mod. Rep.* 167. *March* 45. All artificers must pay to the rector, &c. of their parish the tenth part of their gain (called personal tithes) about *Easter*, for the year then past, (all charges first deducted.) *Stat.* 2 *Edw.* 6. c. 13. *sect.* 7, 8, 9. Also all hired servants the tenth of their wages (deducting the charge of their cloaths;) on failure of payment action lies; but these

these causes are prohibited, except in some places where such personal tithes were payable for forty years before the statute. Any inhabitant of a parish wherein a chapel has been antiently founded, and divine service performed therein, may (if it be neglected) sue the rector &c. in a cause of substruction of divine service. 22 Hen. 6. 16. Litt. Rep. 30.

*Who can't
have action.*

An excommunicate person cannot bring any suit, nor a minor under the age of twenty-one, (without his guardian) nor a dean and chapter, the head, and wardens and fellows of a college, mayor, &c. of a city, or any other community, without a syndich lawfully appointed.

Administration and Administrators.

*Administration
on how to be
granted.*

ADministration must be granted
1. To the husband of the wife's goods. 2. To the wife of the husband's. But an administration may be granted to the father before the widow, and a residuary legatee ought to be preferred before her in an administration, (with the will annexed.) If no husband

husband or wife, then 3. To the children; if the children die first, 4. To the father or mother; if no father, &c. 5. To a brother or sister of the whole blood. 6. To a brother, &c. of the half blood, for they are all next of kin in equal degree; and if none of the half blood, 7. To the next of kin, uncle, aunt or cousin; and for default of these, 8. To a creditor; for want of all these, 9. To any other person at the judge's discretion; or he may *ex officio* grant to a stranger letters *ad colligendum bona defuncti*, or may take them into his own hands to pay the deceased's debts. *Wood's Inst.* 317. Administration may be granted during the minority of an infant (next of kin) to any person, and expires when the infant arrives at the age of twenty-one. It may be granted to one during the absence of another, but it must be expressed in the warrant that the party was then at such a place *extra regnum*. It may be granted to an indifferent person pending suit in case of necessity, as where there are *bona peritura*. *1 Vent.* 313. When legally granted it cannot be revoked, but where it is not (as to stranger when there is a next of kin) it may; but if the next of kin be incapable of taking of it through attain or excommunication,

Dyer 105.
166, 256.

Hob. 250.
1 Brownl 31.

Administration and Administrators.

excommunication, and the judge grants it to another, if he afterwards become capable, it may be repealed and granted to him. 1 *Show. Rep.* 351. If an administrator become a bankrupt, the judge cannot revoke and grant it to another; *aliter* if he be *non compos*, for that is a natural disability. *Salk.* 36. Administration was granted to the grandmother, and a *mandamus* was prayed to have it granted to the aunt, but denied. *Salk.* 38. It is void when granted by a wrong ordinary, and voidable when granted to a wrong person. 1 *Andersf.* 303. *Owen* 50. 1. *Sid.* 371. It may be granted on condition, and whatever the administrator does before the condition broken is good. It may be granted for a particular time, as till, &c. 6 *Coke* 18. 2 *Sid.* 50. or for a particular purpose, as to substantiate proceedings in chancery, &c. or to receive a particular sum, as public stock, &c. No administration shall pass till fourteen days after the intestate's death, nor shall it be granted to a creditor till the next of kin have been cited to accept or refuse, *Dr. Parsons*. On granting thereof, Oath is taken to administer the deceased's estate duly, by paying his debts as far as his estate will extend, to give in a true inventory, and pass a just account of his administration.

Administrati-
on oath.

stration. Bond is also given to the ordinary in double the value of the deceased's estate to make a distribution of what remains after all debts, funeral charges, and just expences of all kinds deducted. *Vaugh.* 96. *Doctor and Student* L. 2. c. 11. *Golds.* 106. *Cro. Eliz.* 425, 459.

Where an executor proves a will and dies intestate, the judge shall grant administration of the testator's goods left unadministred by the executor to another, and this is called *Administratio de bonis non administratis*. Where the executor refuses to prove, administration shall be granted with the will annexed. *1 Roll's Abr.* 907.

Administratio de bonis non, &c.

Cum testamento annexo.

In case of a temerary administration, the right administrator or executor must shew the probate or administration under seal, and demand the deceased's goods, which, if denied, he must be cited to answer articles at the promotion of the administrator, &c.

An action lies for and against an administrator, and he shall be charged to the value of the deceased's goods, and no further; but shall not be chargeable with them until they come to his hands.

1 Roll's Abr. 907, 919. If he dies his executor shall not administer in his stead, but administration shall be granted anew

Terms

Administration and Administrators

Terms of Law 12. He may pay his own debt first, (if it be in equal degree with others;) and if he was indebted to the intestate that debt shall be assets in his hands. 1 *Roll's Abr.* 922. *Vaugh.* 98.

Case where a widow has administration after having barred herself of thirds, &c. by marriage articles. R. W. dies, leaving a widow and brother, the widow prays administration: the brother opposes it, because by marriage articles she had barred herself of all dower, thirds, &c. She sets forth, that the jointure which the deceased was to settle, was not completed; and also that part of the estate he had settled was mortgaged, though covenanted to be clear. *Curia* of opinion, that as the consideration on which she was to be barred was not completed, the bar should not prejudice her, and granted administration to her. In the prerogative court, *Witham* against *Witham*.

Case of Articles between creditors.

Christopher Smith died, leaving two children (infants;) C. S. the grandfather and guardian *ex officio* prayed administration: other creditors appeared, and alledged the guardian was a creditor, and prayed articles; which the judge decreed. The guardian moved for a *mandamus*, which was denied; but they declared if the children had been seven years old, and had chose him guardian, the judge could not order articles.

A. W.

A. W. made his will, and gave the residue of his estate to his wife for life, afterwards to trustees for the use of his daughter *A.* (wife of *J. A.*) for life, without controul of her husband; after her death to her children, and makes his wife executrix; she proves and dies intestate, leaving goods unadministred; the daughter *A.* applies for administration *de bonis, &c. cum testamento, &c.* as also one of the trustees; the judge on hearing common lawyers and advocates decreed it to the trustees.

See Stat. 31 *Edw.* 3. c. 11. 9 *Co.* 652. 5 *Mod.* 375. *Gibson* 573. 21. *Pen.* 8. c. 5. *Shower* 351. 43 *Eliz.* c. 8. 22 & 23 *Car.* 2. c. 10. 29 *Car.* 2. c. 3. 1 *Ja.* 2. c. 10, 17. *Salk.* 251. 30 *Car.* 2. c. 7. 4 & 5 *W. & M.* c. 24. s. 4, 12. 1 *Roll.* *Abr.* 910. *Godolph.* *Orph. Leg.* 131. *Stat. Westm.* 2. c. 19. *Carter* 125, 136. 8 *Co.* 133. 1 *Vent.* 218. *Cases in Equity Abr.* 249. 1 *Sid.* 293, 372, 409. 1 *Lev.* 186, 78. 1 *Vent.* 133. 1 *Sid.* 79. *Co. fol.* 39. 1 *Sid.* 101.

Adultery.

Adultery.

IN Case of adultery a woman's own confession will not prevail. The rule in the civil law is, *revelanti turpitudinem suam fides non datur*. Adultery is a sufficient cause of divorce, but then it must be proved by witnesses. 1 *Roll's Abr.* 295. 2 *Inst.* 488. *Godolph. Abr.* 115. *Degge* 156. *Salk.* 552. *Sir Charles Wolseley on Divorce. Godolph. Abr.* 471, &c.

In causes of restitution of conjugal rites the adultery of the plaintiff alleged and proved by the defendant hinders a restitution, unless the plaintiff proves a compensation or remission of the crime. See 18 *Levit.* v. 20. *Taylor's Cases of Consc.* 1 *Vent.* 158. 2 *Lev.* 67. *Godolph. Abr.* 58. 2 *Inst.* 435. *Can.* 109. *Hob.* 213. *Nelson's Rights, &c.*

Age.

Age.

FULL age regularly is twenty-one years *Co Litt.* 79. But a person may do many things under that age; at fourteen he may choose a guardian, and consent to marry; a woman at twelve may consent to marry, and at fourteen may choose a guardian. A man cannot make a will of goods before fourteen, nor a woman before twelve; but it depends wholly on our courts to determine at what age such wills may be made. *Swinb.* 43, 218. 1 *Inst.* 89. 5 *Co.* 29. 2 *Mod.* 315. 2 *Jones* 210. Age.

A father may by his will, executed in the presence of two witnesses, dispose of the custody and tuition of his children (if under twenty-one years) during their minority, to such persons as he shall think fit. *Stat.* 12 *Car.* 2. c. 24. Minority of an executor determines at seventeen, of an administrator at twenty-one. If money be bequeathed to one at his age of twenty-one, and he dies before that age, the money is lost; *per Finch.* And where one bequeaths a sum of money to a

G woman

Alimony.

woman at her age of twenty-one, or day of marriage, to be paid her with interest, and she dies before either of those days, the money shall go to her executor. 2 Vent. 342.

Alimony.

Alimony, what

A Limony signifies that proportion of the husband's estate, which by the sentence of this court is allowed the wife for her maintenance (upon any separation from him) *pendente Lite*. In every cause where the wife sues the husband, or *è contrario*, as soon as it appears to the judge, either by the answers of the party principal, or by the proofs, that the marriage was solemnized betwixt the parties, the wife's proctor prays that the husband might be condemned in costs of suit and alimony, and then porreçts a bill of costs, and prays alimony to be allowed from the return of the citation, *pendente Lite juxta Ratam* of so much per week, &c. leaving a blank at the bottom of the bill for the judge to insert the sum to be paid *usque finem Litis*; the judge then taxes the costs, and being certified of the man's abilities, [for

1 Chan. Caf.
250, &c.
1 Sid. 124.
Godolph. Abr
508, &c.

[for in taxing of alimony *Consuetudo et Qualitas ejus cui assignatur sunt considerandæ*] he taxes so much for alimony weekly, &c. *Nisi aliter per nos decretum fuerit*; and the usual sum is the third, or at least the fourth part of the yearly value of the estate, though the man may in any part of the suit (to avoid a further taxation) alledge his poverty, or that he is decayed in his estate; the wife's proctor may also alledge the value of the goods her husband had as a portion with her at the time of marriage, and the value of the goods he possesses, that a certainty of the value may appear by his answers. *Nelson's Rights*, tit. *Alimony*. No alimony can be decreed but by consent, or *pro Expensis Litis*, unless there be first a decree for a separation. 1 *Roll's Rep.* 110. *Cro. Car.* 220. 1 *Edw. 4. c. 1.* Alimony may be before divorce; for though the libel be generally *propter Sævitiā*, &c. because the want of necessities is *Sævitia*; yet there shall not always be a separation upon this, but the man may appear and give security to maintain his wife, and so they may cohabit. 1 *Sid.* 109. If the husband refuses to live with his wife, or thrusts her out of doors, the ordinary will compel him to allow her alimony.

Allegations.

2 *Brownl.* 18. In this case she makes an affidavit to this effect.

A. B. wife of C. B. party in this cause, maketh oath, that her husband, the said C. B. has refused to cohabit with her, and has not so done for the space of past, and that on the day of last past, she the said A. B. did earnestly request him the said C. B. to take her home and maintain her as his wife, which he absolutely refused.

This is the proper court for alimony, and if the husband will not obey, the judge may excommunicate him: besides, the remedies are more proper here than by juries. in publick courts, becoue modesty and decency require domestick differences to be privately determined. 1 *Sid.* 124.

Allegations.

Allegations. **A**LL allegations shall be signed by an advocate, otherwise they shall not be admitted. If a judge refuses to admit an allegation material and pertinent

nent to the cause, the party may be relieved on an appeal, if he proves the matter alledged; but if he makes oath of his credulity, he shall obtain upon his appeal without proving the matter alledged.

When a proctor to prevent a cause being assigned *ad concludend*°, says he gives an allegation, he shall really give it in, and shall swear that he believes he can prove it (if required by the adverse proctor); and that he gives it in *non Animo differendi Litem*.

Answers.

A Libel being given and admitted, the plaintiff's proctor is to pray an answer of the defendant or his proctor, who shall be obliged to answer negatively or affirmatively the same day. And whoever makes an insufficient answer, which shall be so adjudged, and ordered to be amended, shall pay 13s. 4d. for the delay, but if it be full the other side shall pay as much. And in examining witnesses as to what they do not know, they may say, they do not know certainly to depose; but a party principal, as to what concerns his

his own fact, must directly answer yea or nay; and as to what concerns another person, what he thinks or believes in his conscience to be true, *viz. per verbum (Credo)*; and in the end of every answer to add these or the like words.—And otherwise he does not believe the contents of the said position or article to be true in any part thereof.—And in writing his answer the proper terms must be observed.—Answers and believes, or confesses, &c. and not deposeth and faith.—And *Note*; those that are called articles to witnesses, are called positions to the party principal.—And where the position is *Multiplex*, and contains many branches, enquire of the party how much thereof he can confess or believe, and that being wrote, close it with [the rest of the contents in the said position he does not believe to be true in any part]. And when a party principal and a witness are both sworn together, it is best to examine the party first; for he perhaps will confess many articles, which, if he does, the examiner may take less pains upon the articles so confessed.—The party principal's answers are taken by his proctor, sometimes by the register *coram judice*, depositions of witnesses by the register; so that the examiner
not

not knowing what answer the party has given, must take all possible pains. If the party confesses any position, he must say that he believes the same to be true; if he does not confess——That he does not believe, but denies the same to be true in any part thereof; but if he says only that he does not believe (without a negative added) the answer will not be full, and it will be decreed for fuller answers. If the defendant will not contest suit negatively, he may confess and contest suit affirmatively, and submit himself to the judge, and offer the costs to be taxed by him (which is frequently done in defamation causes). If he intends to contest negatively, he must protest against the nullity, &c. and that he does not believe the contents to be true, then the plaintiff repeats his libel, and the judge admits it; the plaintiff then prays that the party principal may answer thereto, which the judge decrees accordingly. The answers of a community are given by their syndick, sufficiently instructed and lawfully constituted; and if he does not answer, they may be excommunicated as any other persons may, by these general names, the dean and chapter, and all and singular, &c.

In

In a cause of jactitation of marriage the defendant is obliged to answer the libel, though no witnesses have been produced thereon; *aliter* in a defamation cause,

If the defendant confesses the matter deduced in the libel, and does not the next court-day give in some plea to take off the force of the said confession, the cause shall then stand concluded, and the next court-day after sentence shall pass against him; and whoever does not cite the party to answer before his term probatory be out, utterly loses the benefit of the answer.

If a proctor delivers a false copy of a libel, to which an answer is given, the answer shall be taken. *Godolph. 124. f. 30.*

If the party has not fully answered the positions of a libel, &c. the plaintiff may alledge the same, and the judge shall assign a day to receive informations whether the answer be full or not; and if the respondent shall be adjudged and admonished to answer further, and he refuses so to do, the matter shall be taken *pro confesso*; but if he refuses to be sworn to answer, he shall be excommunicated.

The answer of the proctor in a cause of restitution of conjugal rites
or

to divorce, as to the marriage, is very necessary.

A personal answer is not to be decreed in causes of defamation, or other criminal causes, before the publication of witnesses, *quia per Legem nemo tenetur prodere seipsum.* 1 Sid. 374. When a person is cited to answer articles, (though he is not bound to answer criminous positions upon oath) yet he shall answer the same and other positions not criminous, which if he refuses, it shall be taken *pro confesso*. If the same be confessed or proved, the party may be examined upon oath. If the party is at so great a distance off that he cannot conveniently attend to be sworn to his answers, a commission may be granted to swear him; and if he in his answers swears to the position of a libel concerning his own proper fact, *quod non credit, &c.* and the same shall be afterwards proved, he may be proceeded against for perjury.

If a witness refuses to answer, or not fully answers interrogatories, exhibited by the adverse proctor, the same may be alledged, and the judge shall decree him to answer further.

Apparitors.

Apparitors.

AN appartior shall not be a promoter ; he may be removed for offences, and decreed contumacious if he afterwards exercise his office. *Godolph. Abr. f. 87. f. 12.*

Appeals.

Appeal what.

AN appeal is a removing a cause from an inferior to a superior court, whereby the sentence is suspended till the appeal is heard and determined ; and all acts done after the said appeal, in prejudice of the appellant, are to be reversed. and though one is excommunicated while the appeal is depending, he may bring actions at law. 4 *Inst.* 340. Appeals are from grievances, definitive sentence, or interlocutory decrees.—From grievances are, when the judge refuses to admit an allegation, &c. or receive witnesses, which appeal ought to be made *in Scriptis* (and not *vivâ voce*) within fifteen

teen days. Interlocutory decrees are so called when they are final as to the article, matter or cause. Appeals are either judicial or extrajudicial; the first is either from the sentence or interlocutory; the last is from the acts and extrajudicial decrees. All appeals from a sentence must be within fifteen days; but if it be from an interlocutory it ought to be made within ten days by the canon law. 24 Hen. 8. c. 12. 25 Hen. 8. c. 19. Appeals from grievances in causes of correction shall be against the promoter, and not the judge; in which case the grievance must be proved by witnesses; so must appeals, by reason of taxing excessive costs; in which last case the appellant must shew what is usually allowed by the accustomed style of the court, and what is over-taxed in a particular schedule annexed to the appeal.

If the party against whom sentence is given will appeal, the same may be made *apud acta* (*ore tenus*); whereupon the register is to make the act, and an instrument of appeal attested by witnesses. An appeal from an interlocutory ought rather to be made *in scriptis* than *apud acta*. If a judge make a surrogate or commissioner *ad partes* to examine witnesses, the party may appeal upon any grievance done by

by such surrogate to the judge himself. —If a judge threatens a party to give sentence against him, he may appeal *a verbis comminatoriis*, which words must be proved because they do not appear in the process transmitted. —If a judge after conclusion shall delay sentence for ten courts, the party aggrieved may appeal. Unjust excommunication may be appealed from, and the original cause thereupon shall be proceeded in before the judge *ad quem*, &c. and the appellant excommunicated by the judge *a quo*, &c. may have absolution inserted in the inhibition by the judge *ad quem in talem diem*, &c. —If a sentence is given in the absence of a party, or if witnesses are not received, or suit not contested in plenary causes, the party against whom sentence shall be given may on the day *ad videndam sententiam* alledge the nullity thereof for the causes aforesaid, and pray revocation, in default whereof he may appeal. —If the appellant fail by desertion, non-transmission, &c. the judge *ad quem* shall confirm the sentence of the judge *a quo*, and tax costs with a monition. The appeal shall be shewn to the judge before any inhibition be granted. *Can. 97.* The process shall be duly transmitted to the judge *ad quem*. *Can. 134.* Appeals brought and prosecuted

cuted must be determined within the compass of one year, otherwise they are said to be lost. No party appellant shall be put into a second year, unless upon good causes first shewn and allowed by the judge.

If the party appellate knows the appeal to be just, by reason of some *gravamen*, he may confess the same, upon the return of the inhibition, and pay the costs, and pray the cause may be proceeded upon *coram judice*. The party appellate by reason of a pretended grievance may consent that the principal cause be proceeded in before the judge of the appeal, as well as the appeal itself, to which the appellant is obliged to consent.

If the appellant has served the inhibition on the judge *a quo*, and fails to cite the appellate or to certify his citation, and to proceed in the appeal, the appellate may appear under protestation, and obtain a decree to cite the appellant to appear and proceed, in default whereof the appeal shall be dismissed; if the judge *a quo* after inhibition served on the party appellate, shall do or cause any act to be done in prejudice of the appellant, they shall be proceeded against *in causa attemptationis*; and if the judge be not inhibited within fifteen days, the party

Appeals.

party who has obtained sentence is to have a process *ad videndum sententiam*, &c. and costs taxed; upon the return whereof, the party being cited and not appearing, costs are to be taxed, and sentence put in execution in pain of his contempt. In the causes sentence shall be put an execution as to costs, notwithstanding an appeal interposed, or inhibition issued out, by the 32 Hen. 8. c. 7. But in appeal lies for an immoderate taxation *non obstante* the statute. If an appeal be remitted to the judge *a quo*, the judge *ad quem* may notwithstanding compel the appellant to pay the costs by monition.

The appellant shall on the day of appearance of the appellee give a libel, and proceed in the same manner as in the first instance.

The instrument of appeal under the hand of a notary publick must be exhibited before the cause is concluded, in the presence of the adverse proctor. No term probatory shall be allowed for proof of a libel of appeal where it is appealed from a grievance, but the cause to stand and be concluded upon bringing in the process, where the grievance can appear out of it.

If two appeals are, one by reason of some *gravamen*, before sentence, and the
the

the other from the sentence, and both are contained in the same inhibition, and one libel, and the appellant obtains in the one, and the appellee in the other, the one shall not have costs against the other; but there shall be *expensarum compensatio*.

An appeal from a sentence of sequestration suspends the seizure. *Gibson, tit. Appeal.*

Action lies against a proctor, against whom sentence is given, if he does not appeal.

In the arches, *Michaelmas* term 1726. *Case.* *Warren* against *Culme*, on an appeal *Rate Cause* not from *Exon*, a *querela nullitatis* was a plenary one. brought, setting forth the cause, (being a cause of rate) and that it was a plenary one, and that there was no libel, *litis contestatio assignatio ad proponendum omnia, concludendum*, or conclusion: the judge rejected the *querelas*, and doubted whether it was a plenary cause.

In *Trinity* term 1738. *Somers* against *Beale*, administration was granted to a creditor on the renunciation of the widow only, and not the children; another creditor appeals from the archdeacon's court of *Canterbury* to the arches, because the administration was granted within fourteen days; the judge pronounced against the appeal, because *Case where Appeal from an Administration granted within fourteen days, null.*

because it was not the practice of that court; and archbishop *Whitgift's* injunctions had no effect but in the courts for which they were made.

Case.
No Nullity in a
Civil Cause
where two are
put in one Ci-
tation.

In the court at *Worcester* two persons were put into one citation, one only appeared, and prayed a libel, and consented to all assignations, and a sentence against him.—Objected on the appeal, that by the statute the citation was void, and the whole proceedings null (two being put into it); the appeal was pronounced against, and adjudged no nullity in a civil cause.

Appearance.

Appearance.

UPON the return of a citation, if the person cited (being personally served, or otherwise duly executed) does not appear by himself or proctor, the next court-day the adverse proctor is to accuse his contumacy; and the judge usually reserves his pain, and continues the certificate of the citation to the next court, when if he does not appear he is excommunicated. A person cited, and not appearing, is not contumacious, unless the adverse proctor has expressly accused his

his contumacy. He is said to be contumacious, who being cited does not appear, or monished by the judge does not obey. If the party cited appears (tho' the process be not returned), he shall be dismissed with 6 s. 8 d. Costs, besides 3 s. 4 d. for the monition in case the party agent will not proceed; and it is sufficient for the party cited to appear at any time of the day; and if the party principal appears, all things must be done by him *sub protestatione non revocandi procuratorium*. Where one is cited into the prerogative court to prove a will, or shew cause why administration should not be revoked, the defendant's proctor may appear *sub protestatione de, &c.* and alledge incompetency of the judge and court, the proof whereof will lie on the plaintiff. An accountant (where the interest of the parties is set out in the citation) is bound to appear personally, and not by proctor. No proctor is to appear in case of contempt till answer, nor then without leave. If the party principal or proctor, against whom sentence is to be given, appears not on the day assigned for the same (monition being given) it is to be read *in pœnam contumaciæ*.

In causes of defamation the defendant shall be cited to see penance in-

H

joined

Articles. Affets.

joined him, and monition to pay costs: if he appears, penance shall be enjoined; if he does not, to be excommunicated.

Articles.

Articles.

IN Causes of correction at the voluntary promotion of a common person, it is adviseable for the promoter to exhibit articles in person, and that a proctor be not named till after suit is contested.

Affets.

Affets what.

THE Goods, &c. which belonged to the testator at his death, and which come to the executors hands, are called affets, from the *French* (*Affez*) enough, or sufficient to make the executor chargeable (as far as the same extend) to a creditor, legatee, &c. affets in the hands of one are affets in the hands of all the executors. If the testator's cattle breed after his death, the

the young shall be assets: so wool growing, goods mortgaged and not redeemed, or the money wherewith they were redeemed; all debts, &c. recovered by the executor by action. If an obligee or creditor be made executor, their debt is assets. Tho' a plantation be an inheritance, yet being in a foreign country, it is a chattel to pay debts, and a thing that is testamentary. 2 Vent. 358. A debt released by the executor is assets as received. Hob. 59. If lands are devised to executors for years, this is assets. 2 Brownl. 47. Damages recovered in a *Quare Impedit* are assets; so are all separate debts in an inventory, for they may be had for demanding (unless the demand or refusal be proved); *per Holt*. Salk. 296. * Leases are assets to pay debts, notwithstanding the executors assent to the devise of them. If an executor make a *devastavit* and die, his executor must make good the quantum of it to the creditors, if he has assets from the first executor. 1 Chan. Cases 257. If an executor makes gain of the testator's money, it is assets. 1 Brownl. 77. If a feme administratrix wastes the assets, and marries, and dies, the husband is liable to no more than what came to his or his wife's hands

Office of executors, c. 6.

Wood 323.

* Orph. Leg.

206 contra,

and 2 Lev.

110 per Hale.

fed vide 133.

per Turner;

if he is charg-

able yet Qu.

1 Chan.

Cases 257.

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See Zelv. 84. b. n.

Caveats.

hands after the marriage. *Cases in Abr. Equity* 60.

In a cause of legacy where the executor has no assets except specialties, which perhaps are desperate, he may tender an assignment of them; and if it be refused, and no other assets proved, he shall have costs. In case of defect of assets, legacies ought to be paid in equal proportion.

Caveats.

Caveat what.

A *Caveat* is a kind of entry or memorandum left in a book kept for that purpose in all register's offices, to stop probates, administrations, licences, dispensations, faculties, institutions, &c. from being granted without the knowledge of the party that enters it, in the following form.

Form of a caveat

Let nothing be done in the goods of *A. B.* late of *C.* in the county of *D.* deceased, without notice to *E.* proctor, for *F. G.* having an interest, [or the widow and relict, or a creditor, &c. of the said deceased.]

An

An administration was granted pending a *Caveat*. Q. if revocable for that cause? *Curia*. It is, and the delegates are judge of its validity; and it is in the civil law the same as a *supersedeas* at common law; it is an entry or memorandum by the clerk to give caution. 1 *Lev.* 157. 1 *And.* 303. *Owen* 50.

Case of administration granted where caveat is entered void.

The courts of common law ought not to meddle with the validity of a *Caveat*; the canon and civil law allow it, *quia veretur damnum futurum*, 1 *Sid.* 371. *Poph.* 133. *Godoph.* *Abr.* 276. 2 *Brownl.* 119.

An executor after a *Caveat* entered is sworn before a surrogate, and held good; and he cannot afterwards be admitted to refuse. 1 *Vent.* 335.

Certificates.

After a citation or other process has been served upon a party, the mandatory usually makes oath, and certifies the day and place when and where the party was served; or if he cannot find him to serve him personally, he must certify this also, in order to have a *viis et modis*. The plaintiff may

Certificate of citations.

Charitable Uses. Churches.

may proceed in a cause, tho' the defendant object against the certificate of the execution of the citation.

*Of execution
of a commis-
sion.*

In a commission *ad partes*, the notary who was made choice of to execute it must draw a certificate in the name of the commissioners, directed to the judge who granted it, to which the depositions taken, the commission, interrogatories and substitutions, (if any) are to be annexed, and then the certificate must be sealed up and subscribed by the notary.

Charitable Uses.

Charitable use.

MONEY given to a parish generally, without saying to what use, shall be decreed to the poor of the parish. 1 *Chan. Cases* 135.

Churches.

*Resorting to
church.*

EVery person is obliged to go to some church or other, and an entire neglect is punishable in this court.
Salk.

Church-wardens.

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Salk. 167. *Mod. Cases* 188. *Lindw.* 184, 233. *Ref. Leg.* 106. *Sparrow's Coll. Can.* 77, 78, 126, 236, 237, 181. 31 *Rubrick ad finem.* 2 *Roll's Rep.* 438, 455. *Hardr.* 406, 407. *March* 93. *Stat.* 5 & 6 *Edw. 6. c. 1.* 1 *Eliz. c. 2.* *Echard's Hist. Eng.* 52. *Can.* 21. 1 *Sid.* 35. *Stat.* 1 *W. & M. c. 18.*

Church-wardens.

Church-wardens are to be chosen yearly in *Easter* week by the joint consent of the minister and parishioners, if it may be, in which case the minister has only a single vote; but by custom he may choose one, and the parishioners another. 1 *Vent.* 267. *Can.* 89. But a custom that the old church-wardens should choose the new ones, was held unreasonable and illegal in *Mr. Arnold's* case at *Hereford* assizes 1704. They are temporal officers, and have the property and custody of the goods of the church; and as it is at the peril of the parishioners, so they may choose and trust whom they think fit. 5 *Mod.* 325. And the archdeacon has no power to elect or controul their election; he has no more to do than to ad-

Church-wardens when and how to be chosen.

Church-wardens.

administer the oath, and admit the person chosen.

At a meeting of a vestry, (whether select or at large) in order to elect them, the minister has only a right to concur with the majority of the vestry for the choice of both; but in case of disagreement with the vestry, he has the sole right by virtue of the canon of naming one for the year ensuing, to act as, and be sworn a church-warden, after he had openly disagreed to the choice of one by the vestry, unless there be an immemorial custom for the parishioners to choose both, in which case the custom over-rules the canon. Wherever, or in what body of men soever the right of electing them lies, or is invested by canon or custom, such men may each year choose such persons as please them best to serve that office, who are not excused or incapable by law of holding it, tho' those persons have formerly served that office, and are willing to serve it again; for they being trustees for the parish, the minister (as the case is) or inhabitants are the best judges of his capacity and qualifications to serve them. And tho' the person named by the minister to serve be entred in the book, and no protest made against such his right of choosing, yet it is in the power
of

of any one of the vestry or parish to enter a *Caveat* against such person's being sworn, and to bring the minister's right on the canon and the custom into question. Dr. P. 1725.

A counsellor or an attorney cannot be chose, if they are, a prohibition lies. *Who are excused from serving.*
 2 Roll's Abr. 272. Church-wardens being dissenters may act by deputies.
 Stat. 1 W. & M. c. 18.

In summoning the parishioners they need not do it from house to house, but a general public summons at the church is sufficient, and the major part of them that appear will bind the whole parish.
 1 Mod. Rep. 236. At every visitation they shall present the names of all those that behave disorderly in the church, and all offences presentable by our laws relating to the church, parson or parishioners; and that not only on their own knowledge, but on common fame: they shall not be sued for presenting, nor be bound to present above twice a year, Can. 111. Their Office.
 (but may at any time.) The old ones shall make their presentments before the new ones are sworn; and when they present any crime they are not bound to prove, for it is presumed they do it without malice, and that the crime is notorious. They shall collect the offertory, and with the minister dispose of it. By Stat. 13 & 14 Car. 2. they shall sign
Dr. Chamberlain's State of England, part. 2. p. 28.

Can. 89.

sign briefs, and attest what is collected. Stat. 4 & 5 *Ann. c.* 14. At the end of the year, or in one month after, they shall give an account of their receipts and disbursements to the minister and parishioners, and deliver what remains in their hands to them, or to the new church-wardens; and on refusal may be presented at the next visitation by the new church-wardens; or any of the parish that are interested may by process call them to an account before the ordinary; and if they have disbursed more than they have received, their successors shall pay what is due to them, and account it among the disbursements at the end of the year. 1 *Mod.* 194. 1 *Roll's Abr.* 121.

Case.
Out of Office
cannot sue.

In the delegates, *Michaelmas* term 1729, *Sepe* against *Prudence* and *Bond*, — Church-wardens out of their office sue for a rate made by them in the year of their wardenship; defendants say they being out of their office could not sue, and sentence was given in the inferior and arches courts for the church-wardens; but the judges delegates were unanimously of opinion, that they could not sue when out of office, so reversed the former sentence, and condemned the church-wardens in costs.

Citations.

A Citation is a summons to appear *Citation what.* before an ecclesiastical judge; it contains 1. The name of the judge and style of the court. 2. The defendant's name. 3. The day and place of appearance, (*viz.*) the third day after service, if it be a court-day, otherwise on the next court-day following, or more or less time according to the distance of the place of the defendant's abode. 4. The plaintiff's name. And 5. The cause. It either contains a peremptory command to appear, or is mandatory and inhibitory, where the defendant is not only cited to appear, but the judge before whom the cause lately depended is forbid to proceed any further, or else they are intimatory; as where executors cite all the next of kin to ^{ul} a will proved, &c. intimating that if they do not appear, &c. the judge will proceed, &c. *Inhibitory.* There are also general citations, as *General.* where the defendant is cited to attend the whole proceedings; or special, as *Special,* where he is cited to do some particular act, &c. If the defendant absconds, so

- so that the citation cannot be personal. *Viis et modis* ly served upon him, a citation *viis et modis* goes out, a copy of which is to be affixed on the outward door of his house or last usual place of abode, or on the church door of the parish wherein he inhabits. *Gibson* 1043. These citations in the courts of arches and prerogative are directed to all and singular clerks and literate persons, whomsoever and wheresoever in and throughout the whole province of *Canterbury*; in other courts——To all, &c. in and throughout the whole diocese [deanry or archdeaconry] of *L.* but in requisitions the judge directs to one or more specially named and appointed. In monitions for payment of costs, &c. *sub pœna*, &c. the direction is——To all and singular rectors, vicars, chaplains, curates, clerks, and literate persons whomsoever, &c. All citations in the prerogative court go out in the archbishop's name, to appear before the right worshipful *J. B. L. L. D.* master keeper or commissary of the prerogative court of *Canterbury*, or his surrogate. If it be a decree from that court, the party is to appear at a certain day and hour. Peers of the realm are desired to appear by letters missive from the judge. A minor must be cited to appear lawfully, *viz.* by his guardian lawfully assigned (*quia non est habilis standi*
- To whom directed.*
- Requisitions how directed.*
- Monitions sub pœna, how.*
- Prerogative Citations.*
- Decrees.*
- Peers how cited.*
- Minors how.*

standi in judicio in propria persona.) A body aggregate (as a company) must be cited to appear by their syndick, and the citations served on the wardens. A citation against a dean and chapter is to be served by fixing it for some time on the door of the chapter house. That against a master and fellows of a college on the gates of the college. That against a mayor, &c. of a city on the door of their Guildhall, or on the Exchange.—A decree against a party beyond sea must be fixed on one of the pillars of the Royal Exchange.—A citation with intimation in a seat cause, or for faculties for vaults, &c. goes out against the minister church-wardens, parishioners and inhabitants of the parish of A. in special, and all others in general, having or pretending to have any right, title or interest, in or to the seat, &c. and is directed as monitions, with this addition [and more especially to the rector, vicar or curate of the parish of, &c.] and is to be read in the church on a Sunday or festival in the time of divine service.—None shall be cited originally into the arches out of another diocese without leave of the bishop, except on an appeal, or in other cases reserved in Stat. 23 Hen. 8. c. 9. Any judge offending shall be suspended three months.—If one is cited out of his diocese

Company how.

Against a dean and chapter.

Jones 187.

Master and fellows of a

college.

Mayor &c.

of a town.

A person beyond sea.

Citation with intimation for

faculties, &c.

how directed.

Citation out of the diocese.

Dr. Cosins,

pt. 1. c. 8.

Clark 11. c.

8. Lindw.

de judiciis.

Can. 94.

diocese and appears, and sentence is given, or if he submits himself to the suit, he shall have no benefit by the statute, nor will a prohibition be granted; if he would have the benefit of the statute, he must pray a prohibition before sentence, otherwise it will be too late.— If one is cited within the diocese, though not an inhabitant, but only comes there, to trade, &c. this is not within the statute. *Gibson* 1048. The subtraction of tithes is local, and must be sued for before the ordinary of the place where the wrong is done; *aliter* in cases transitory, *ubi forum sequitur reum*. *Salk.* 549. 1 *Roll's Rep.* 328. *Cro. Car.* 97. 13 *Co.* 4. 2 *Roll.* 448. 3 *Mod.* 211.

*In a cause of
contract.*

In a citation in a cause of contract an inhibition must be inserted to forbid the defendant to contract or solemnize any marriage with any other person, *pendente lite*; if the plaintiff suspects any person, he may cite him [or her] in special, and all others in general: after sentence given in these causes, a monition goes out against the defendant to cause him [or her] to solemnize the marriage with the plaintiff before such a day *sub pœna*, &c.—If a person so inhibited from marrying do marry pending suit, he or she may be cited to answer articles of contempt. If the defendant, after citation

*Monition to
solemnize marriage.*

tation and *viis et modis* returned, and ex-communication decreed and denounced, still absconds, a decree shall issue against him to appear *singulis sessionibus*, to see a libel given, &c. Witnesses produced, &c. and the plaintiff may proceed to sentence in pain of his contempt.

Decree to appear singulis sessionibus.

Codicils.

A Codicil *est voluntatis nostræ iuxta sententia de eo quod quis post mortem suam fieri vellet absque executoris constitutione.* When one has made a will, and would alter part of it, he may do it by adding a codicil; this is as much used as a will, for most wills of consequence have codicils annexed; and it is so far from revoking that it confirms the will, and amounts to a new publication. A man may have twenty codicils though but one will. 1 *Show.* 550. Stat. 29 *Car.* 2. against frauds, &c. A codicil may be added by parol to a will in writing; and this shall be put in writing and affixed to the will. *Hill.* 22 *Car.* 1. and *Pasch.* 23 *Car.* 1. in *B. R.*

If

*Case.
Of the num-
ber of witnes-
ses to them.*

If any pecuniary legacies given by a will or any other part thereof be diminished or revoked by a codicil thereto annexed, such codicil must have three subscribed witnesses thereto; *è contra* if any additional legacies are only given thereby, two witnesses are sufficient.
Per serjeant G.

Commissions.

*Commission
what.*

How obtained

A Commission is a power given from a judge to one or more, sealed and directed to him or them to dispatch business in parts remote from his court; the manner of obtaining it is thus.—
The proctor of the party must alledge that his client has several necessary witnesses to prove the contents of his libel, &c. but that they live in parts remote, so that they cannot attend to be examined here without great expence; wherefore he prays a commission to be decreed directed to two or more clergymen on behalf of his client, and also to two or more on behalf of, and to be named by, the adverse party, jointly and severally
to

to sit in such a place, in order to examine the witnesses to be produced before them on such days, with power (if need be) of continuing and proroguing the time and place, taking to themselves some notary public indifferent to the parties, and that the commission with all the proceedings had thereon be transmitted by such a day; and that the term probatory be continued to the return of the commission, and the adverse proctor admonished to be there present at the time of the execution (if he thinks it his interest;) if he does not attend, all proceedings must be had *in pœnam contumaciæ*; if he cannot attend, he may substitute another. Where the witnesses live out of the judges jurisdiction, the office of the judge where they live must be implored in the nature of letters of request; this is called *commissio sub mutua vicissitudinis obtentu*; the manner of obtaining it is thus: the proctor alleges that he has some necessary witnesses, &c. but that they live in the diocese of L. by reason whereof they cannot be compelled to appear in this court to be examined; wherefore he prays a commission or requisition, directed to the right reverend, &c. and his vicar general, jointly and severally in aid of law

*Commission
sub mutue.
Letters of re-
quest.*

law to receive, admit, swear, and examine the said witnesses, in any place, and on any day before, &c. and concludes, for which you shall receive the like favour from us if at any time required.—All commissions for examinations may be decreed at the same time that the matter is admitted, but the proctor not to be obliged to take them out till the party's answers are given in (if insisted upon;) and the place of speeding of it to be then named, and must be returned within the term probatory. Such commissions may be renewed shewing cause. Commissioners delaying or neglecting to return a commission, may be cited to answer articles for the contempt upon an allegation of the proctor; if the adverse party deny such allegation and fail in the proof, he shall be condemned *in expensis retardati processus*. There are various kinds of commissions besides those, as for taking a person's answers, for swearing an executor or administrator to a will, &c. or to an inventory for taking bonds, and for absolution; also commissions directed to two or more appraisers to value the deceased's goods, and to inspect his papers, which is called a commission of appraisement.

*Commission of
appraisement.*

In

Compulsories.

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In the cause between *Best* and *Best* in *Case.*
the prerogative, *Trin. Term 1727. P. B. Relating to*
died intestate, leaving a widow but no *the charges of*
children; the next of kin prayed a com- *one.*
mission of appraisement: the judge or-
dered the charges thereof to be paid out
of the estate, and made it a standing
rule.

In *Michaelmas 1730. Lord London-Case.*
derry's executors moved for a probate *Where denied.*
of his will; the creditors prayed a com-
mission of appraisement, which the judge
decreed; afterwards a *mandamus* was
granted, and the judge obliged to grant
a probate without an inventory.

Compulsories.

THE plaintiff having desired his *Compulsory.*
witnesses to appear, and tendered
them *expensas viaticas*, he is to pray a
compulsory or *viis et modis* (if need be;) *Compulsory.*
but then the proctor must take care that
his term probatory be prorogued.—
The witnesses must have such expences
taxed by the judge, who shall compel the
producent to pay them before examina-
tion. If upon a commission witnesses
I 2 do

Conclusion. Contempt.

do not appear, the commissioners may decree a compulsory.

Conclusion.*Conclusion.*

ON the day assigned to conclude, the plaintiff's proctor prays the judge to conclude with him, which done he prays a day and place which is usually some indifferent day and place named by the judge to be informed. When matter is alledged foreign from the principal cause, and proof thereof made, and the judge assigns a day *ad audiendum voluntatem suam*, the cause as to the matter is concluded.

Contempt.*Contempt.*

IN causes of contempt, if the party upon his examination or answer confesses the fact, the promoter may alledge the same and pray sentence. Articles of contempt run in the judge's name thus: in the name of God, amen. *W.* and *J. B. &c.* vicar general, *&c.* do object,

Contracts of Marriage.

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object, give and administer to you *A. B.* of, &c. certain articles or interrogatories concerning a contempt of us, and our jurisdiction of our mere office [*or at the promotion of C. D. &c.;*] and the judge usually assigns some proctor of his court, as a necessary promoter of his office, and he shall give articles, and it shall be proceeded in summarily, and the party shall be produced upon these articles if he be present in court.

Contracts of Marriage.

WHERE a mutual contract *per Of contracti.*
verba de præsenti can be proved, this court will compel the parties to solemnize the marriage, though either or both of them are married elsewhere, and have celebrated the last marriage *in facie ecclesiæ*, and have had children (and such children will be deemed bastards.) The Statute of 2 & 3 *Edw. 6.* reduces our laws relating to contracts to the state and order which were used here before the Statute of *Hen. 8.* which was, that a contract proved by two witnesses only was sufficient, and used to be confirmed by our judges. See *Trin. 28 Hen. 8. Dyer 13. Conset pt. 6. c. 1. f. 12.* in his

Contracts of Marriage.

his whole chapter of contracts never makes evidence in writing any necessary part of the proof of a contract ; and lays down expressly that a proof by two witnesses (at the fewest) who are all without exception, is sufficient to dissolve a subsequent marriage lawfully solemnized and consummate, and confirmed by daily cohabitation together, in exact agreement with the words of the Statute of 32 Hen. 8. (though he adds that two are the fewest in such a case,) and in *sect.* 14. he says, if the plaintiff proves a contract by one sufficient witness (who is without all exception) and doth prove a treaty by others, or proves an acknowledgment by two witnesses (the parties being present ;) or if he proves a contract for a future marriage by two, and a treaty by the same, or other witnesses, or proves an immediate marriage by two, and these proofs are afterwards taken away by lawful exceptions unknown to the party producing them ; or if the proofs are difficult (the witnesses not being without all exception,) or if by reason of a former contract or marriage, or by a subsequent solemnization of a marriage made *pendente lite*, here the judge (though he has given sentence for the defendant) usually condemns him in costs.

Sec

See Can. 102. *Readings on the Stat.*
Vol. 4. 194, &c. Salk. 438. 1 Sid.
13. Fitz. Nat. Brev. 41. Cro. Eliz.
79. 5 Co. 51. Mod. Caf. 155, 6.
Fortescue de Laudibus, &c. Temp. Hen.
6. c. 21, Frynge's Case.

Costs.

IN *taxatione expensarum, tria debent Costs,*
concurrere. 1. Judex debet taxare eas-
dem. 2 Victor debet jurare se illas fecisse.
3. Judex debet delato juramento ferre sen-
tentiam super eisdem.

Executors, guardians and trustees,
 are usually exempt from costs, or award-
 ed costs out of the estate in their hands.
 These courts may tax costs where there ² Roll's Abr
 is only fame, so where the plaintiff has ^{299.}
causam litigandi. Cases in Eq.

In causes of voluntary promotion, if ¹⁸⁵¹
 the fame and not the crime be proved,
 so that in the sentence purgation be de-
 creed, the promoter shall have his costs,
 for the defendant by denying the fame
 has obliged the promoter to be at some
 charges in proving it.

After transmission of the proceedings
 in an appeal exhibited (which is to be
 before conclusion) the judge *ad quem*
 must

must tax the costs of the transmission, and grant a monition (if need be.)

If the actor or *reus* alledge any exceptive matter from the cause, and the allegation is admitted and a term probatory assigned, so that the original cause is delayed, the proponent failing in proof of his matter shall be condemned *in expensis retardati processus*.

When an action is brought by a wife here, and she obtains sentence, the husband may release the costs. *Per Dr A.*

Criminal Causes.

Crimes ecclesiastical.

CORRECTION and punishment of ecclesiastical crimes belong *de jure communi* to the bishops; for publick and notorious crimes, as fornication, &c. Publick penance must be inflicted on the party to be done *in facie ecclesiæ*.

Artic. Cleri.
c Edw. 2. c
2.

The method of proceeding in these causes is threefold, by *inquisition, accusation* and *denunciation*.

A person suspected of a crime may be convened before the ordinary *in animæ salutem*.

Church-

Church-wardens are to present upon oath at the visitation all those that are noted or suspected of any crime within the parishes, upon pain of excommunication. If a rumour be spread against any one by infamous or malicious persons, the presentment must be special and particular, *viz.* such a report or fame was spread by such persons, &c. *Can. 115.*

A person presented by church-wardens may be put to purgation without giving articles or producing witnesses, though he deny both fame and crime.

Custom.

OF every custom there are two essential parts, time out of the memory of man. and continual and peaceable usage without lawful interruption. *1 Inst. 110. b.* In pleading a custom you must alledge that in such a county, &c. there is, and time out of memory of man, hath been such a custom used and approved therein. If a custom be not denied these courts shall proceed, but if it be, a prohibition will lie *non propter defectum jurisdictionis, sed triationis.* *Salk. 334.* Vide *Preface to Davis's*

Davis's Reports. Salk. 203. *Doctor and Student*, l. 1. c. 7. 10. *Davis* 1. 32. *Coke Lit.* 33 b.

—of London
as to intestates
estates.

See Priv.
Lond. 279,
323.
*Will of free-
men.*

Hotchpot
what.

By the custom of *London* a freeman's widow may require a third part of his personal estate (after debts and funeral expences paid,) and his children another third, and he may by will give away the remaining third. If no children, the widow has one half; but if he has no will, administration must be granted to the wife, and she shall have one third by custom, one third to be divided among the children, and the remaining third among the wife and children. A freeman by his will cannot prejudice his wife as to her third, yet he may give it away in his life-time. And if he advance any of his children with any goods, it shall bar them of any further demand, unless he under his hand or by will declares, that it was but in part of advancement, then the child so partly advanced shall put his part in hotchpot with the widow, and have a full third part of the whole, accounting that former money advanced, as part thereof; and this is called *collatio bonorum*. 1 Inst. 176. b. The custom does not extend to batchelors (freemen,) but that they may devise as they please; and in case of intestacy, distribution must be made according

Custom.

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according to the stat. of 22 & 23 *Car.* 2. c. 13. By a late statute 11 *Geo.* 1. c. 18. a freeman may by will devise as he pleases; but if he dies intestate, distribution must be made according to the custom.

J. W. citizen of *London*, dies intestate leaving a widow and half brothers; now the widow has three fourth parts of the whole: she is to have a moiety by the act, and the custom is preserved without any prejudice; so that if by the custom she should have the three parts, she shall enjoy them (any thing in the act notwithstanding.)

The design and scope of the act was not to set a widow of a freeman before any other, but only to preserve her rights, which (if greater than others) to continue.

Where there are any customs, as in *York, &c.* there the act does not take place, but leaves it as it was before when the widow had a moiety; which customs being preserved, let her take her choice to stand by what the act (as to women in general) determines, or what shall appear to be the custom of *London*: if she waves the custom, the act will take place, if she does not, she can pray no further benefit by the act; for how is the custom observed, which

which the scope of the act is to preserve, if the sum (which by the custom is allotted to the widow) is either augmented or diminished? And further, she cannot have portion on both accounts, as well custom as act; for the act takes place only where no custom has obtained:

Worcester. *Provided, &c. shall not in any wise prejudice, &c. any custom (i. e. shall not lessen any portion due by custom, as that at Worcester, which is for the widow to have two thirds, the children one, whereas the act prescribes one third to the widow, and two to the children: now here the widow shall not be abbreviated by this act.)*

Any thing contained contrariwise notwithstanding (that is, those proportions or quantities which are specified in this act shall not prevail in any city where a greater or lesser sum, than what is here prescribed, is allowed).

The act meddles not with one moiety, which is due by custom, and therefore extends only to that part which is not subject to the custom, (*viz.*) a moiety of the residue.

The scope of the act is to make intestates wills, and to dispose of that part which they could have given at their pleasure to whom they would, and have not done it. Every citizen
of

of *London's* will, as to such a share, is made to his hands; the law of the city makes it so; as *W.* died intestate only as to a part.

As to one moiety (there being no child) *W.* dies a testate, and dies intestate only as to the other, which of necessity must fall under the cognizance of the act (or else the act is in vain); if so, one moiety of the residue shall be the wife's.

Where there is a wife and children, and all provided for by the custom, the intestate's part shall not be wholly given to the children, but the mother shall be concerned equally, and have a share, which shall be equal proportionably to what the custom gave them both; if so, then sure the widow who has the administration, and to whom the law shews all imaginable favour, and who is at the trouble of getting in the estate, shall be in as good a condition (when persons of a remote degree contest with her) as when the deceased's children are contestants.

By custom there may be select vestries, or a certain number of persons elected, who shall have the government of the parish, to make rates, and to take the church-wardens accounts. *1 Mod. 194. See stat. 17 G. 2. concerning vestries.*

De:

Defamation.

Defamation.

DEFAMATION ought to have three incidents. (1.) That the matter be merely spiritual, and determinable in those courts. (2.) That it concern a matter merely spiritual; for if it concerns any thing determinable at common law, our judges shall not have cognizance of it. (3.) Tho' the thing be merely spiritual, the person defamed cannot sue here for damages (the suit being here only *pro salute animæ*); but he may recover costs here. 2 Lev. 155. 22 Edw. 4. 20. Artic. cleri et circumspēcte agatis. 1 Lill. Reg. 8co.

Regularly a cause of defamation ought not to be brought after one year since the words were spoke, unless the plaintiff was beyond sea, or in a remote place when spoke.

In these causes the defendant may alledge (without process) defamatory words spoken against him by the plaintiff, and the causes are to proceed together; and if such allegation be proved, no penance shall be enjoined nor costs

costs paid: this is reconvention, but the judge may *ex officio* punish both.

Words not defamatory, yet spoken maliciously and reproachfully, are punishable here; *aliter* of complicated words (*as thou art a whore and a thief*) for action at law will lie for a part, and a prohibition will lie for the whole.

1 Vent. 7 *Herbert v. Merrit*. Words of passion are not defamatory, being regarded by the hearers no more than the words of one *non compos*; *ira furor brevis est*. Salk. 692. *Smith v. Wood*.

A writer of a scandalous libel against another may be sued in a cause of defamation, by adding *tenoris schedulæ præsentibus annexæ, quam pro hic lect. et insert. haberi petiit*.

If in a cause exception be taken to the persons of the witnesses, containing scandalous matter which cannot be proved, the witnesses so defamed may proceed against the party principal or proctor that exhibited the same in a cause of defamation.

A person prosecuted unjustly in a criminal cause by a voluntary promoter, or being presented by church-wardens, nothing being proved against him, may proceed against the promoter or presenter in a cause of defamation.

Di-

Dilapidations.

Dilapidations. **A** Rector, &c. endowed, leaving dilapidations, his goods shall answer in such proportions as the revenue of the church will bear. Dilapidations shall be judged only by credible persons upon oath. Under the name of dilapidations are comprehended fences, hedges, &c. as well as decayed and ruinous buildings; and it has been particularly adjudged, that the felling of wood and timber by an incumbent, otherwise than for repairs or fuel, is dilapidations, from which he may be restrained by prohibition during his incumbency, and for which he or his executor is liable to be prosecuted after he ceases to be incumbent. The ordinary has a right to take cognizance of them in the incumbent's life-time by voluntary inquisition, or upon complaint made to him, and to enforce reparation by sequestering the profits, [or some part of them, rarely more than a fifth, which is to be received by some trusty person, and applied towards repairs, and the overplus returned to the incumbent] or by eccle-

What.

ecclesiastical censures, even to deprivation. *Gibson* 789. 1 *Roll's Rep.* 335 3 *Keb.* 619.

A curate or his executors are not suable for them.

By the statute of 13 *Eliz. c.* 10. no clergyman can sue his predecessor or executors, but only for so much of the dilapidations as have happened through his default. *Watson's Incumb.* 176.

The plaintiff before suit shall cause the defects to be viewed by workmen, who shall make an estimate of the whole charge, and set their hands to it; the defendant may also have workmen to inspect them, and the plaintiff shall be admonished to permit the same; or the judge may if he pleases have a view taken by workmen appointed by him for his own satisfaction. *A view to be made.*

There are many reasons which excuse the rector, &c. from condemnation in dilapidations; as (1.) Where the predecessor died insolvent. (2.) Where the last incumbent (pending a suit against his predecessor) died (without executor), or so in debt that none would administer. (3.) Where, on a suit against the last incumbent's executors, they were freed by sentence on *plene administravit* pleaded, and the insufficiency of the goods; or where after sentence against them the execu-

K

tors

tors died in execution, leaving not goods enough, and that he has used all possible diligence to recover dilapidations, and has laid out according to the value of his living a sufficient sum in repairing the things mentioned in the libel.—The sooner the ruins are inspected after induction the better.

Distribution.

Distribution.

BY Stat. 22 & 23 Car. 2. c. 10. the ordinary may order a distribution of what remains after debts and funeral expences paid, *viz.* one third to the intestate's wife, the rest among his children, and such as legally represent them; if any of them are dead, other than such children (not heirs at law) who shall have any estate by settlement of the intestate in his lifetime, equal to the other shares. Children (other than heirs at law) advanced by settlements or portions not equal to the other shares, shall have so much of the surplusage as shall make all their shares equal, and the heir at law shall have an equal share with the others, besides what he has by descent or otherwise. If no children or legal representatives, one half goes to the wife, the rest among

among the next of kin in equal degree, and their representatives.——But no representatives to be admitted among collaterals after brothers and sisters children; if no wife, all goes to the children; if no child, to the next of kin and their, &c. in equal degree; and no distribution to be made till *after one year* from the intestate's death.

If *A. B.* are next of kin, though *A.* dies *within the year*, and before distribution, yet his part shall go to his executors, &c. for the act vests an interest in him upon the intestate's death, and the *proviso* for a year, is only to save the administrator from a *devastavit* by not dividing till he sees the estate.

3 Mod. 58.
Nelson's Lex
Test. 24.
Moor 220.
1 Roll's Abr.
31.
Cro. Car. 202.
1 Show. 1, 25.
Gibson 577.

And every one to whom any share is allotted shall give bond with sureties, that if debts afterwards be made to appear, he will refund *pro rata*.

2 Vent. 317.

And by stat. 1 Jac. 2. c. 17. if after the father's death any of his children die intestate (without wife or child) in the mother's life-time, every brother and sister, and their representatives, shall have equal share with her; the father surviving has all. Stat. 251.

See Stat. 38
Edw. 3. c. 11.
Sid. 409.
Show. 351.

Where there are grandchildren of an uncle and aunt, and a son of an uncle living (all their antecedents dead), the grandchildren can't come in *Jure Repræsentationis*, being in a degree

Distribution.

more remote than brothers and sisters children, beyond which no representation takes place, and then they are out of equality of degree. 1 *Lill. Reg.* 660. *Salk.* 250. *Tho. Raym.* 496. The aunt is not intitled to distribution with the grandmother, the last being the nearest of kin. *Salk.* 251. The half blood is intitled to distribution with the whole blood. *W. Jones's Rep.* 209.

A. had three brothers, one died leaving three children, another two, and the third five; then *A.* dies intestate. Resolved that distribution should be *per capita*, and not *per stirpes*, and all should have equal. *Cases in Eq. Abr.* 249.

Where a man makes a will, and a stranger executor, and gives him a legacy, but does not dispose of the residue, he dies intestate as to that, and it shall be distributed among the next of kin. 2 *Vern.* 361, 676, 634. 2 *Mod. Rep.* 101. *Cases in Eq. Abr.* 244, 249.

Divorce.

THE sole confession of the parties Divorce.
is not sufficient for a divorce,
there must be proof by witnesses.—
There are two sorts of divorce, a
mensâ & thoro, and a *vinculo, &c.* How many
The first is in cases of *adultery, cru-* sorts of.
elty, &c. in which the marriage ha- AMensâ,&c.
ving been originally good is not dissol-
ved, nor does it bar the wife of dower,
or bastardize the issue, but intitles her
to *alimony*. The second annuls and 2 Inst. 93.
dissolves the very bond of matrimony, Sid. 13.
as in cases of *precontract, consanguinity,* Dyer 105.
or *affinity* within the degrees prohi- A Vinculo,
bited; also of *impuberty* and *frigidity.* &c.
Where the marriage itself is merely
void *ab initio*, and the sentence of di-
vorce only declaratory of its being so.
In this second case, the wife is barred
of dower, her children illegitimate,
and the person so divorced may marry
any other. After divorce *a mensâ &c.*
the parties shall not marry any other
during each other's life; nor shall the
sentence of divorce be given till they
have given security to the court that
they

Evidence.

they will not marry. *Grey's System.* Where a man is divorced in a cause of *frigidity*, it is prohibited by such sentence that he shall not marry again, and if he does he is held a *perjurer* and an *adulterer*. 2 Leon. 169. In causes of *frigidity*, the man must be inspected by *physicians*, and the woman by a jury of *matrons*; *et si persona sit inhabilis matrimonium dissolvatur.*

Separation from bed and board is for peace sake till opportunity of atoning.—By divorce *a thoro* &c. they are not shut from all converse with one another, they may return to mutual embraces again.

In causes of divorce for adultery, if the defendant proves that the plaintiff has also committed adultery, he (the defendant) shall be dismissed *quoad petita in libella, et hoc est compensatio criminis.*

Evidence.

*Evidence
what.*

Evidence generally speaking is used for some proof either by witnesses upon oath, or by writing. One may be allowed to give evidence upon
hearsay

hearsay to confirm another's testimony. Probable evidence is of little weight against positive oaths.

If a man be over sea, or dead, the party shall be admitted to prove his hand by witnesses, or comparing it with other writing. See *Law of Evidence*, p. 2. ca. 3.

Where either party would produce any writing, and give it in evidence, it must be exhibited with an allegation, and so proved. The hand of a party signing may be proved by letters, or other his hand-writing, which are to be exhibited by allegation; and being proved, proctors or approved writers are to be assigned by the judge to compare the same, who are to give verdict thereon.

Excommunication.

THERE are two excommunications, *major* and *minor*: the first is where one is excluded from the communion of the church in its sacred rights and privileges, and from the company of the faithful; so that it is excommunication to keep company with him. The second is where one is

Excommunication what. Major.
Minor.
ex-

The inconveniencies an excommunicate lies under.

excluded only the sacraments and divine worship, and is generally passed upon obstinate persons for not appearing on a citation submitting to do penance, &c. No excommunicate person shall be suffered to come into a church, nor if he die under sentence to have christian burial; he is disabled to do any judicial act, as to sue, &c. be a witness; and if he does not submit in forty days the bishop shall signify his condition to the court of chancery, and require a process *de excommunicato capiendo*, upon which he shall be imprisoned without bail. None but a bishop can certify excommunication, or one that has ordinary jurisdiction. *Gibson 1106.*

The minister or curate ought to publish letters denunciatory upon an excommunication, without delay, on pain of suspension; and that suits may not be delayed by persons persisting in excommunication, the judge may proceed at the promotion of the party grieved against the excommunicate person in a cause of correction for persisting in excommunication.

A man unjustly excommunicated, by reason of a false return of the citation or other process, may alledge the same, and upon proof thereof the adversary shall be condemned in costs.

Executors.

Executors.

EXecutors must pay debts before legacies, and debts of a higher nature before others; as first, debts to the king, then debts on record, by statutes, &c. Debts on mortgages, bonds, &c. Rent, servants wages, book-debts. They may satisfy what legacies they will first, though there be not enough to satisfy all; or pay a part of a legacy, or deduct a part: but if there be a particular thing devised, as a horse, &c. this must be delivered in specie, and cannot be sold by them to pay all or any part of others, See *Hob.* 265.

*Executors.
A rule to be
observed in
their payments.*

Guardians.

A Guardian (or *curator*) is one that educates a child, and manages his estate till he comes of age; and is either testamentary, *i. e.* appointed by will of the father, &c. or by the law. As to suing of actions a guardian must be

*Guardian
what.*

be assigned in that court where the suit is to be commenced. A guardian having instituted an action against an executor for a legacy, the executor may pay it *apud acta*, which will be a good discharge to him against the infant when he comes to full age.

The father or next of kin of an infant shall at his own instance be admitted guardian (where he is under seven years of age); but if above he must appear in person, and pray a guardian to be assigned him.

Jactitation.

Jactitation.

IF any person falsely give out that he or she is married to such a one, he or she is to be sued in a cause of *jactitation of marriage*. Where the defendant may alledge matrimony in his own defence, which if proved, sentence shall be given against the plaintiff, not only for failing in the proof of the libel, but it shall be pronounced for the marriage; as in contract causes, if the defendant fails in the proof of his allegation, he shall be condemned in costs; and a monition shall issue out against him to be silent, and desist from such

such boasting and assertion for the future.

Interrogatories.

ONE shall not ask a witness a question, the affirmative answer to *Interrogatories* which may draw him into a crime. He shall not be examined upon interrogatories till he has gone through the evidence for the party on whose side he was produced.

The adverse proctor shall have a reasonable time to prepare his interrogatories from the time of the production of a witness, generally twenty-four hours; if they are not ready by that time, the examiner is not to stay or detain the witness.

Long and *multiplex* interrogatories often hurt the cause of the party ministrant, and make for the producent.

—*Ergo cavete procuratores!*

An=

Inbentorp.

Inventory.

Vide Stat. 21
Hen. 8. c. 5.

*What are to
be put into it.*

BY the laws and statutes of this realm an inventory is necessary to be made by an executor or administrator; and if they refuse they may be punished by the ordinary. The things that are to be put into it are all the goods, chattels and credits, wares, merchandizes moveable or immoveable, of or belonging, or due to the deceased at his death; also leases, corn growing; but not grass or trees, nor things fixed to the house, and are part of the freehold (for they belong to the heir); nor the wife's goods, called *paraphernalia*: the time for making and exhibiting it is left to the ordinary's discretion. The goods must be particularly valued and appraised by one or more honest and skilful persons, at such prices as the same might have been sold for at that time in their judgment. The goods contained in the inventory are presumed to have belonged to the deceased, and after his death to be in the administrator's power; and no more goods are presumed to have belonged to him than

Inhibition. Judge Ecclesiastical.

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than are therein contained. And if any creditor, &c. affirm that the deceased had more goods than are comprized in the inventory; he must prove it, otherwise the judge is to give credit to the inventory. *Swinburne of Wills* from 420, &c.

Where an inventory has been exhibited upon oath in common form, and appraised by neighbours, the proof lies on the party objecting.

Inhibition.

Inhibitions should not be granted without the subscription of an advocate. *Inhibition.*
Can. 96. And shall not be granted till the appeal is exhibited. *Can. 97.*

Judge Ecclesiastical.

An unskilful judge may be removed. *Judge Ecclesiastical.*
Godolph. Abr. 82. f. 4. f. 92. f. 19, 20. Godolph. 74. f. 2. A partial *Unskilful.*
judge may be refused, (the party cited *Partial.*
exhibiting articles containing the partiality,

tiality, in which case arbiters must be named on both sides to judge thereof.)

*Provocation
what.*

If a person suspects any inferior judge to proceed against him in a cause of correction *minus juste*, he may (before he is cited) put himself under the jurisdiction of a superior judge, which is termed provocation.

Legacies.

Legacies.

WHERE legacies are to be paid to children at full age, the executors may be sued here to put in security.

If a legacy is bequeathed generally, and no time mentioned for payment, and the legatee is an infant, he shall be paid interest from the expiration of the first year after the testator's death. Where it is left payable at a day certain, it must be paid with interest from that day at *5l. per cent.* *Salk. 415, 416.*

Where sentence is given for a legacy, the legatee must give bond to refund, in case debts appear afterwards. *2 Vent. 358. Noell v. Robinson.*

In a cause of legacy, all the executors that are living and proved the will must

Legacies.

III

must be joined in the suit; and if dead, the executors or administrators of the survivor. Legacies in specie are to be paid, and may be insisted on to be tendred in specie (*si extant*), otherwise the true value. If the plaintiff proves a legacy given to him in specie, as a gold cup, &c. and obtains sentence for it, and that it is subtracted, but fails in proving the value thereof, the defendant is to be called before the plaintiff prays execution to see liquidation of the sentence, and the plaintiff must produce witnesses to prove the value.

If an executor by suppressing a will, or concealing it, shall obtain administration (as if the testator had died intestate) a legatee may sue for his legacy, and obtain as in ordinary cases.

If a legacy be given to an infant to be paid him when he shall come to the age of twenty-one, if he dies before twenty-one his administrators shall sue for it directly.

A mother executrix shall not discount for education and maintenance out of the money left to her son by the father, for she ought to maintain him; *aliter* where money is paid to bind him out apprentice. 2 Vent. 355 *Anonymus*.

Libel.

Libel what.

A Libel is a declaration or charge drawn up in writing on behalf of the plaintiff, to which the defendant is obliged to answer. Words in a libel [*aut in effectu consimilia*] good. Gibson 1052. If a false copy of a libel be given, and the adverse proctor plead to it, he shall have the advantage of the plea, for the other was bound to deliver a true copy; and prohibition lies for denying a copy (but oath must be first made of the denial), and that *quousque* the copy is delivered; though if an appeal be made for such denial, as for a *gravamen*, no prohibition will be granted. 1 Vent. 252. 1 Roll's Rep. 337.

All libels must be signed by an advocate, and engrossed on a double six-penny stamp.

Licences.

MArriage licences are upon these *Marriage li-*
 conditions. (1.) That there is *cences.*
 no impediment by reason of any pre-
 contract, consanguinity or affinity.
 (2.) That no suit is depending. (3.)
 That it is with consent of parents or
 guardians (where either of the parties
 are under twenty-one years of age.)
 (4.) That the marriage be solemnized
 in canonical hours, *viz.* between eight
 and twelve in the morning; and oath
 must be made by one of the parties to
 the same effect *sub pœna*, &c. and bond
 given to the ordinary with a penalty of
 200*l.*

An archbishop cannot license a mar-
 riage within the degrees prohibited,
 as being against the law of God.
Hob. 148. Colt and Glover v. Bishop of
Coventry and Litchfield. 2 Inst. 684.

Marriages.

*Marriages.
what requisite
to compleat
marriages.*

A Full, free and mutual consent between parties (not disabled to marry by their near relation to each other, infancy, precontract or impotency) is very requisite, *nam consensus, non concubitus, facit matrimonium.* As to marriages within the degrees prohibited, those in the ascending and descending lines, *i. e.* of children with the father, grandfather, mother, grandmother, and so upwards, are prohibited without limit (they being the cause immediate or mediate of their being.) As to degrees of affinity, tho' I be not directly forbid to marry my wife's sister, yet when God commands me, I shall not marry my brother's wife, by parity of reason he forbids me to marry my wife's sister, for there is the like analogy and proportion between one man and two sisters, and one woman and two brothers.

See 18 *Levit.* *Vaugh.* 246. *Carter* 233. 2 *Vent.* 910. 2 *Stillingfl.* *Cas.* 58. *Noy* 29. *Co. Lit.* 33. *a.* *Trin.* 24 *Eliz.* *Mich.* 41, 42 *Eliz.* *Moor* 575. 35 *Eliz.* *Co.*

Nuncupative Wills.

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Co. Litt. 79. Pasch. 7 Jac. B. R.
 1 Danv. 699. Moor 170. 1 Siderf.
 13. Davis 51. 7 Co. 43. Stat. 32
 Hen. 8. c. 38. 2 Inst. 683. 2 & 3 Prid.
 Connect. 569. 6 Co. 65. 5 Mod. 170,
 449. 2 Lev. 254. 1 Sid. 64. 4 Leon.
 16. Tho. Jones's Rep. 118, 191, 213.
 3 Keb. 166. 1 Mod. 25. Salk. 548.
 Vaugh. 206, 302.

Bedding is not by law essential to the marriage, but it is compleat before, tho' the law will presume it to have been consummated on proof that they were upon a bed together, tho' the proof of the celebration of it by the priest will alone be sufficient to found a sentence. *Per Dr. A.*

Nuncupative Wills.

BY Stat. 29 Car 2. c. 5. no nuncupative will shall be good where the estate bequeathed exceeds the value of 30*l.* that is not proved by the oath of three witnesses that were present at the making, nor unless the testator bid them bear witness that such was his will, nor unless made in his last sickness, in a house where he had resided

Nuncupative wills.

ten days or more before the making (except where surprized and taken sick, and died before his return home). No proof will be admitted after six months after the words spoken, unless the substance thereof was taken down in writing within six days after making, and no administration (with such will annexed) shall pass the seal under fourteen days, nor then till the next of kin have been cited to accept or refuse, or contest it.

Case of one.

S. P. made a nuncupative will as follows that she would leave to *A. B.* 30*l.* and to *C. D.* 30*l.* and being three times asked of this matter, she always answered, that she would give as above, and all the rest, &c. of her substance should be equally divided between *E. F.* and *G. H.* which will was reduced into writing, and signed by three witnesses in her life-time, presently after her speaking the words, and died next day — Two of the witnesses were examined in a cause depending in the bishop of *Bristol's* court about the validity of this will, but the third was beyond sea.

It was objected there by the defendant, that the will was not good within the meaning of the statute of 29 *Car. 2. c. 3.* against frauds, &c. for that it was not proved by the oaths of three wit-

witnesses (the other being absent), nor but by one that the testatrix bid them bear witness, &c. and that the will runs in the future tense (that she would give, &c.)

Quære, Whether notwithstanding the above objection the said will is a good disposition of her personal estate, and whether it be sufficiently proved by the two witnesses, tho' one of them only has proved the *rogatio testium*?

I apprehend that one witness is in this law sufficient, and several judgments have been given (since 29 *Car. 2.*) that one witness will answer the intent of that law. The objection that the words are in the future tense has but little force; for in making a nuncupative will (according to *Swinburne*) no precise form of words are required; nor is it material whether the testatrix speaks properly or not, provided her meaning and intention appears, and the rules enjoined by the above mentioned statute are observed.—The objection that to me seems most material is, that this will is proved by two witnesses only, (the estate being above 30 *l.*) and the statute expressly requires three where it is above that value.—I am of opinion in this case, that the power, office and discretion of the ordinary are limited, by the exact form

form of the statute, and that he has no liberty or authority to wave or excuse the want of the third witness by reason of absence, or any account whatsoever, the statute being his rule and the measure of his judgment; and therefore I conceive this will is not within the words of the statute, and therefore null and void, and an administration must be granted to the next of kin. Dr. P. 1722.

Oaths.

*An oath
what.*

3 Inst. 165.

AN oath is an affirmation or denial of any thing before one or more who have authority to administer the same, for the discovery of truth and right, calling God to witness that the testimony he gives is true; and it is called a corporal oath, because the witness lays his hand upon the holy scriptures at the time he takes it; tho' in Dr. Owen's case, he being a witness to prove a will, refused to be sworn formally, *i. e.* to put his right hand upon the book, but ordered it to be held open before him, and he lifted up his right hand; and Glyn held this a sufficient oath. 2 Syd. 6.

If

Penance.

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If the adverse party exhibit exceptions or dilatory plea, the plaintiff may require an oath of the proctor that he does not do it for delay or out of malice, but that he believes his client is able to prove the same; and the plaintiff may before or after conclusion pray that his own oath may be taken as a supplement where the proof is *sempiene*.

A peer produced as a witness must be sworn.

Penance.

Public penance must be performed *Penance.*
by an offender notoriously guilty —*publick.*
of any ecclesiastical crimes in the face
of the church. Penance may be in-
joined in a cause of defamation; but
that is private, in the vestry, the —*private.*
defamer reading a schedule of pe-
nance in the presence of the plaintiff,
minister and church-wardens. *Stat.*
Artic. Cleri, 9 Edw. 2: c. 2.

Plene

Plene Administravit.

Plene admin-
istravit.

PLENE *Administravit* cannot be pleaded, unless all debts, &c. as far as assets will reach, are discharged.

If these courts refuse to accept the plea of *Plene Administravit* the party may appeal, for they proceed ill; if they accept it, they must try if he has fully administered or not. 1 Syd. 274. Noy 77.

If an executor plead *plene administravit* in an account, tho' after sentence given against him, and before execution demanded, he is condemned in a debt in a secular court, he shall have the advantage of alledging this matter.

Probates:

Probate.

IF executors come to prove a will, the ordinary must do it in common form; but if others come to prove a latter will, it must be *per testes* Hetl. 77. The judge or his surrogate must ad-

administer an oath to the executor as follows.

“ You swear that you believe this *Executor's*
 “ paper contains the true last will and *Oath.*
 “ testament of *A. B.* deceased, and
 “ that you are the executor therein
 “ named, and that you will well and
 “ truly perform the same, by paying
 “ first his debts, and then the lega-
 “ cies therein bequeathed, as far as the
 “ estate which will come to your hands
 “ will thereto extend, and the law
 “ charge you, and that you will bring
 “ in a true and perfect inventory, and
 “ pass a just account of your admini-
 “ stration when you shall be thereunto
 “ by law required.”

If a quaker be executor, you must write his affirmation on the back of the will thus.

“ I *A. B.* do solemnly, sincerely and
 “ truly affirm and declare that I am
 “ one of the dissenters from the church
 “ of *England*, commonly called quak-
 “ ers, and that I believe this paper con-
 “ tains, &c.” And let the quaker set
 his name thereto.

The

The judge cannot refuse a probate to an executor *quia incapax*. Salk. 299, 303, &c.

Rates.

Rates for Repairs of Churches.

THE rates for the repairs of the church shall be laid upon every occupier of lands in the parish, though he live in another; and he may come to the vestries, and vote in making the rate, but he shall not be charged towards the ornaments of the church on account of such lands, for the personal estate of the inhabitants are chargeable with every thing that does not relate to the fabrick of the church, or repairs of the fences of the churchyards, or such things as concern the freehold. 5 Co. 67. If church-wardens erect any thing new, either as to the fabrick of the church or churchyard, they must have the consent of the parishioners (and if such additions are in the church, the licence of the ordinary. Where necessary repairs are wanting, the major part of the parish will bind the less; in such case, if the major part will not consent, the church-wardens may repair without their

their consent: if upon notice given ^{1 Vent. 367.} them they refuse to meet, or having met refuse to make a rate; or this court will compel them to repair, and may excommunicate all the parishioners till it be done; but those that are willing to contribute shall be absolved till the major part agree to a tax, but our courts cannot assess them towards it: and if a rate be illegally imposed (as by a commission from the bishop, &c.) without the parishioners consent, yet if it be afterwards assented to and confirmed by the major part of the parish, that will make it good. ^{1 Mod. Rep. 194.}

The lands of a company are chargeable for the repair of a church, and a prohibition was denied in this case, ^{2 Jones 187.}

Seats.

SEATS in churches do not belong ^{Seats in Church.} to persons, but to houses. If an inhabitant of a parish has time out of mind repaired an isle of a church, and used to sit there, &c. such usage makes it proper, to the family; otherwise if it has been repaired at the parish

rish charge. An isle may belong to a private person, yet the freehold is in the incumbent. See *Watson's Incumbent* 382, &c. In case a person in possession of a seat in a church be disturbed by another, the ordinary may inhibit the disturber till the matter be determined. *Godolph. Abr.* 138, 146, 151, 155, 157. If a man with the assent of the ordinary sets up a seat *in nave ecclesiæ*, and another pulls it down, trespass *vi et armis* will not lie, for the freehold is in the parson, and the only remedy is in our courts. *Watf.* 382, &c.

Though the minister and church-wardens have no right (exclusive of the ordinary) in placing the parishioners, but must act in subordination to him (because when any dispute of this nature arises he may set aside what they have done if he sees cause); yet persons so placed in a seat unappropriated, may continue to use such seat till the matter comes to be litigated and determined in the proper court. *Wharton Peche, Norwich* 1732.

Sequestration.

IN causes matrimonial, where the plaintiff suspects the woman will marry another, he may have her sequestred pending the suit. *Sequestration*
(pendente lite) *Causa Matrimonii.*

If two persons claim a right to a benefice, and alledge the same before a judge respectively, the profits thereof shall at the petition of either of the parties be sequestred pending suit. A living may be sequestred for dilapidations, &c. *—of a Benefice.*
See Watson's Incumb. 422. &c.

Spoliation.

IF one and the same person present two clerks, one to the parsonage and the other to the vicarage, and the one takes the fruits of the other, the party grieved shall sue *in causa spoliationis.* *Spoliation.*
See Watson's Incumb. p. 8.

Wills.

Wills.

Wills.

A Young man beyond sea wrote a letter, in which he declared his will to be, that his effects should go in such a manner; and adjudged good. *Moor* 177, *West's* case. 2 *Leon.* 35. 3 *Leon.* 79. Though not sealed. *March* 206. Though in loose sheets. 1 *Syd.* 315. Though in form of an indenture and sealed, and delivered, being proved to be intended as a will. 1 *Mod.* 177. Good, where the lawyer only took short notes with design to reduce it into form, which he after did, but the deviser died before it was read to him. 1 *And.* 34. 1 *Brownl.* 44. *Dyer* 72. *Kelw.* 209. Where wrote down unknown to the deviser, and afterwards read to him, and approved by him. *Cro. Eliz.* 100. 1 *Leon.* 113. Where good though gnawn to pieces by rats in the testator's life-time, if by joining the pieces together the contents can be known. If a man writes his will with his own hand, though he does not subscribe his name), but seals and publishes it, and the three witnesses subscribe their names in his presence, it is a good

a good will, for his name being wrote in the will, it is a sufficient signing, and the statute does not direct whether it shall be at the top or bottom. 3 *Lev.*

1. And by three judges against one the sealing is a signing within the act. And *note*; it is not said in the act that the signing shall be in the presence of the three witnesses, but their subscription must be in his presence. 3 *Mod.*

219. To a will of a personal estate two witnesses are sufficient. *Co. Litt.*

111. One may make a will in several writings, and those writings may be made at different times; no man can think all his thoughts at once.

2 *Cro.* 144. *Noy* 117. 1 *Show.* 69. If one being sick gives notes to make his will, and afterwards is so weak that his memory fails him, and these notes are made into a will, it is good; *aliter* if he become a lunatick after the notes given. 1 *Brownl.* 44. If a will be

wrote by the testator himself, and found in his escrutore among other writings (though not published in the presence of witnesses, and by them attested), it is a good will; though in this case the executor must procure two people that were well acquainted with the testator's hand-writing, to make oath that they believe that to be his hand-writing.

Rider

Case 1.

Rider v. Rider in the *Prerogative* 1703. *Tho. Rider*, Esq; was the deceased; his brother alledged that the deceased gave instructions to Mr. *L.* to make his will; that Mr. *L.* made a draught, and caused a transcript to be made which he gave to the deceased, who carried it away, and afterwards made several obliterations, alterations and interlineations with his own hand, and then transcribed it over fair, that the fair, and also the altered transcripts, with the first draught made by Mr. *L.* were found in the deceased's study. The fair transcript was propounded by the brother, (who was a legatee) and was contained in two sheets of paper which were found loose; it concluded thus: "In witness whereof I the said *Tho. Rider* have to this my last will and testament set my hand and seal the " day of in the year of " our lord 1697." Note; the will was neither signed nor sealed. — There were no witnesses examined to the deceased's hand-writing, but the same was confessed by the widow in her answers, as likewise that the fair transcript and draughts were found in the deceased's study.

The widow in opposition to this propounded a draught of a will which was not of the deceased's hand-writing, but

but of a later date, viz. Aug. 1701, but not executed; she pleaded that it was drawn by the deceased's directions, read over to and approved by him, and he declared he would execute it. This was found in his study with the others before mentioned. The judge pronounced that the deceased died intestate, from which sentence the brother appealed *ad statim* to the delegates. And in 1704 the delegates reversed the sentence of the judge of the prerogative, and gave sentence for the fair transcript of the deceased's hand-writing propounded by the brother.

Miller v. Miller. John Miller deceased. Case 2. This cause was originally begun in the prerogative, between the brother and widow. The brother propounded a will unexecuted, and pleaded that it was drawn by the deceased's directions, read over to and approved of by him; but the persons in whose house the deceased lay ill refused several of his friends admittance, and therefore the writer of it had not an opportunity of getting it executed. It concludes thus. "In witness where-
"of I the said *John Miller* have to
"each sheet of this my last will and
"testament, comprized in two sheets
"of paper, subscribed my name, and
"put my seal to the top and bottom
M there.

“ thereof. Dated the day and year
 “ first above written.” *Note*; it was dated at the top 24 July 1680. “ Signed
 “ sealed, published and declared by the
 “ said *John Miller* the testator, for
 “ and as his last will and testament,
 “ this 24th day of July 1680, in the
 “ presence of ” The deceased
 died the 31st of July 1680.—The
 widow pleaded *insanity*, that all persons
 had free access to the deceased,
 that the writer of the will had access
 but would not leave it with the deceased.
 —This cause was appealed to the
 delegates from a grievance, which was
 pronounced for, and they gave sentence
 for the will in 1681.

Case 3.

Worlich v. Pollet. *Mary Pollet* deceased. This cause began before the
 commissary of London between the deceased's
 daughter (a minor and residuary legatee in
 the will, acting by *Henry Worlich* her guardian)
 and husband, who opposed the will.—It appears
 by the evidence in this cause, that the deceased
 who was ill, told one *Eliz. W.* that she intended
 to make her will, declared how she would have
 it made, desired her to get what she had so
 declared to her reduced into writing, which she
 did, and carried the same, being the draught of
 a will to the deceased, and read it over to her,
 and she

she approved of it, and desired her to get it wrote over fair, which she did, and carried to her; to whom it was read over, and she approved of it, and declared it to be her last will, and ordered her nurse to fetch one Mr. P. to be a witness; but being told he was from home the will was left with her, and she died eight days afterwards without executing it. It concludes thus.

"In witness whereof I the said *Mary Pollet* have hereunto put my hand
"and seal this 28th day of August
"1700. Signed, sealed, pub-
"lished and declared by the said *Mary Pollet* as her last will and testament,
"in the presence of "

(the words *Mary Pollet* interlined before sealing.) Dr. Newton the commissary in 1701 gave sentence for the will; the husband appealed to the arches, where the commissary's sentence was reversed, and the deceased pronounced to die intestate; the guardian then appealed to the delegates; and in *Michaelmas* 1702 the judges (being five civilians only) annulled the sentence of the dean of the arches, confirmed Dr. Newton's, pronounced for the will, and decreed administration (*cum testamento, &c.*) to the guardian.

Case 4.

Wright v. Walthoe. Richard Holman deceased. Sentence was given in the prerogative in 1710 for three testamentary schedules of the testator's hand-writing.—The first concludes abruptly without any name or date.—The second thus. “ And I do declare this to
“ be my last will written in
“ and have hereunto set my hand and
“ seal the day of
“ and in the year of our lord ”
—This is neither signed or sealed.—The third concludes abruptly, being neither signed, sealed or dated.

Case 5.

Deborah Langston deceased. Sentence in 1723 for three testamentary schedules of the deceased's hand-writing; the first was executed in the presence of two witnesses. The second is signed by the deceased, and afterwards these words wrote “ signed and sealed Sep. 13, 1721 ” The third concludes abruptly without execution.

Case 6.

William Snelling deceased. This will is of the deceased's hand-writing, and concludes without saying *In witness, &c.* but the words, *signed, sealed, published, &c.* wrote underneath,—It was neither signed, sealed or witnessed; it was proved in *February 1712.*

Case 7.

David Dagget deceased. The will was of the deceased's hand-writing, and concluded “ In witness whereof, to
“ this

"this and to the other seven sheets
 "annexed I have set my hand and
 "seal the Day of July 1715."
 The words (*signed, sealed, &c.*) wrote
 underneath. There was a seal, but
 not signed or witnessed. A *Caveat* was
 entred by the deceased's son, which
 was warned, and he had a time assign-
 ed him by the court to declare whe-
 ther he would oppose the will or not;
 but upon his not opposing, probate
 was granted in Feb. 1718 to the
 daughter (executrix).

Robert Pollard deceased.—The *Case 8.*
 will was of his hand-writing, and con-
 cluded thus. "Witness my hand and
 seal the Note; neither signed nor
 sealed. Proved 17 December 1705.

William Russell deceased. The will *Case 9.*
 was of his hand-writing, and concluded
 "In witness whereof I have hereunto
 "set my hand and seal the day and
 "year first above written.
 (*signed, sealed, &c.*) Note; there
 is a seal, but not signed or witnessed;
 it was proved August 3, 1727.

Joshua Hinton deceased. He was an *Case 10.*
 eminent attorney in London, and in
 his last illness had a design to have
 made his will himself, and therefore
 wrote down his intentions on a scrip
 of paper, beginning thus: "my will
 "and desire is--ten pounds to wife and
 daughter

"daughter for mourning," besides several legacies (the sums in figures, with the initial letters only of the names of the legatees), and concludes "executors, John Lateward, Richard Lateward, John Adams."—This schedule was propounded by the executors, who gave an allegation pleading the identity of the several persons in the said scrip mentioned and was opposed by the widow and daughter. —Sentence was given against this in the prerogative in April 1738, and administration decreed to the widow. On the 3d of May following, the executors moved to be paid their expences in supporting the same, which (after many arguments) they were allowed; but the judge refusing to let the administration pass before they were paid, a *mandamus* was granted to compel him.

Case 11.

J. L. and M. L. his wife made their joint will, appointing the survivor executor; and thereby the said J. L. did will, that in case of his death before his wife, she should remain possessed of all his goods, &c. to enjoy and dispose of as she pleased, only recommending to her to leave at her death three fourths of the then remaining moiety of his effects to M. A. and the other fourth to J. B. or their heirs, leaving her to dispose of the other moiety at her pleasure.

The

The said *M. L.* survived, took probate, and possessed herself of his effects, made her will, disposing of the said moiety, as above, and afterwards intermarried with *J. C.* and died.

Is not the said will, made during her widowhood, by the subsequent marriage become void? and is not Mr. *J. C.* intitled to administration to her as dying intestate?

I am of opinion that her will became void by her marriage with Mr. *J. C.* as to all the estate which she had a property in, and at that time a right to dispose of, by reason that such estate became her husband's by marriage; but she being executrix of her former husband, such part of the estate as came to her as executrix, and the property whereof did not vest in her, did not become the husband's by marriage, and her will may stand good as far as relates thereto; and a limited probate or administration (with the will annexed) may be granted to the persons interested, and an administration of the rest of the estate to Mr. *C.* her husband. See *Wentworth 201*; per Dr. *A*—w 1738.

R. B. bequeaths thus. “Item I give, *Case 12.*
 “&c. all the rest of my estate to my
 “wife *E. B.* and son *R. B.* making
 “and joining them whole and sole
 “executor

“executor and executrix of this my will.” *R.* the son in 1728 proves (power being reserved to *E.* the widow and other executrix) and receives 100*l.* of his father’s (which was at interest) and pays it to *J. S.* (who since married *E.* the widow) and also sold several of the quick goods of his father’s, and kept the money to his own use, and dies.—*E.* has since his death proved the will to intitle herself to the whole or her half-share of her husband’s effects.—The *Query* was, if the effects by the bequest of the will, and their being *made and joined whole, &c.* would go to the survivor of them? Or if so, if the payment of the 100*l.* by one executor to the other’s husband, and the executor’s selling part of the goods, and retaining the money to his own use, would be presumed in law to be a division of that part of the estate, if not the whole of the effects? The bequest of the residue in this case I look upon to be in the nature of a joint legacy: had either of the legatees died before the testator, the whole would have accrued to the survivor; but where both live to take, the law divides the legacy, which immediately vests in the legatees, each for his share upon the death of the testator; so that tho’ no division has actually

tually been made, yet the estate being once vested, it is my opinion the share of the deceased executor will go to his representative, and not to the surviving executrix.

As to such part of the estate as has been actually divided in the son's lifetime or such effects as were in the testator's own hands at his death, whether money, stock or goods, and were deviseable at any time, I make no question; nor of such debts as have been actually received since his death. The doubt with me is concerning such things as the law calls a *chose en action*, where the testator had not the thing in possession, but only a right of action to recover it, or perhaps of a chattel lease, which being a thing indivisible till sold, I am not so clear whether these would not accrue to the surviving executor. Dr. A——y 1730.

If a cause be instituted between an executor and one of the testator's relations by collusion to prove the will *per testes*, and the executor by such collusion is to fail therein, a legatee having interest in the will may intervene in judgment to preserve his own interest.

Wit.

Witnesses.

*Witness who
may, or may
not be.*

A Legatee is a competent witness to prove a will (after he has renounced his own legacy). 3 *Keb.* 570. Such as are infamous, as attainted of felony or false verdict, conspiracy, perjury or forgery, or have had judgment to lose their ears, or have been branded, infidels, of *non sane* memory, or as have interest in the cause, are not competent witnesses. 1 *Inst.* 6. 3. *Lev.* 426. Though judgment of the pillory infers infamy at the common law, it does not by our law, unless the cause for which he was convicted was infamous; and unless he was convicted for an infamous cause, he shall be a good witness to prove a will.

A Jew is a good witness, and may be sworn upon the Old Testament. 2 *Keb.* 314.

Where one objects a crime to disable a witness, he must produce the record of his conviction, if he would invalidate his testimony.

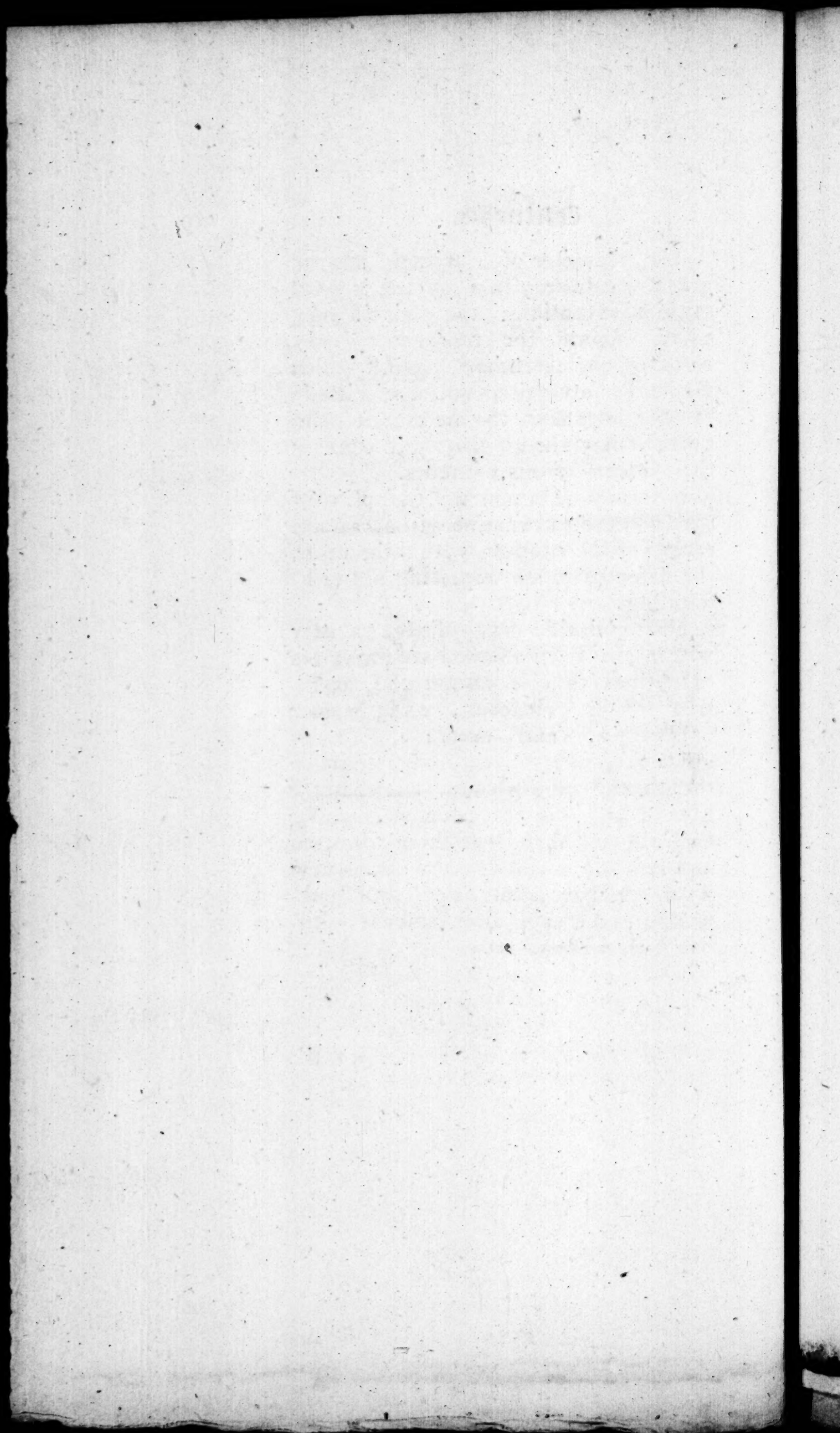
It may be justifiable to maintain or subvert a witness, but not to offer him any reward tho' to speak the truth.

The

The character of a witness may be given. Adultery in a witness is good cause of exception: the plaintiff may except against the reprobatory witnesses of the defendant, against which no further exception shall be admitted; but the defendant, tho' he cannot again except, may alledge matter to confirm the evidence of his witnesses.

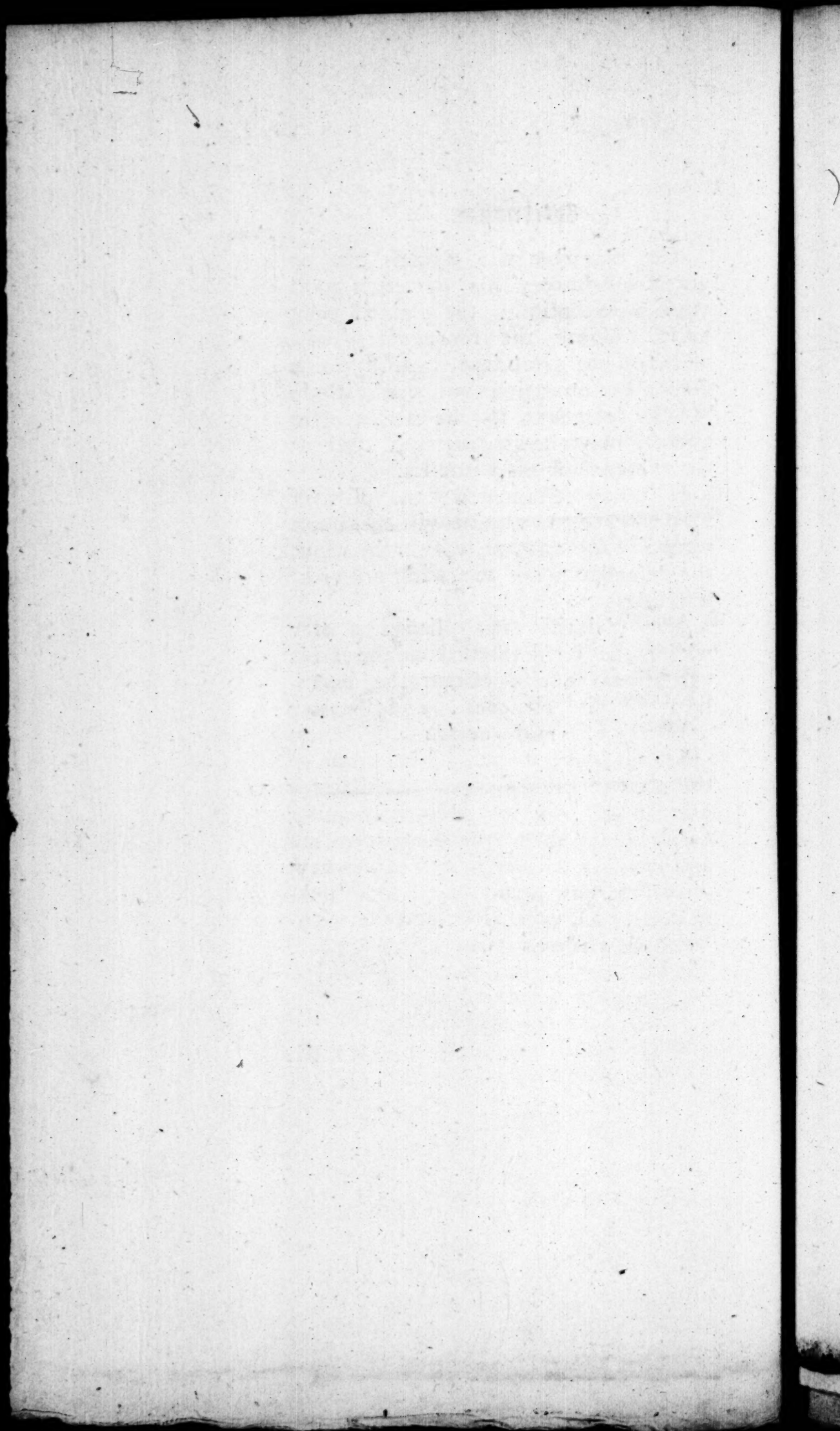
In causes testamentary the plaintiff may proceed to examine witnesses upon return of the citation, with intimation, the defendants not appearing notwithstanding.

The plaintiff may alledge matter within the term assigned to prove his exceptions to corroborate the depositions of his witnesses; and if after publication, and before conclusion other necessary witnesses have come to the plaintiff's knowledge, the plaintiff himself and not the proctor, making oath thereof, shall have them admitted and sworn. In matrimonial causes new witnesses may be produced after publication, and even after sentence without oath made as above.



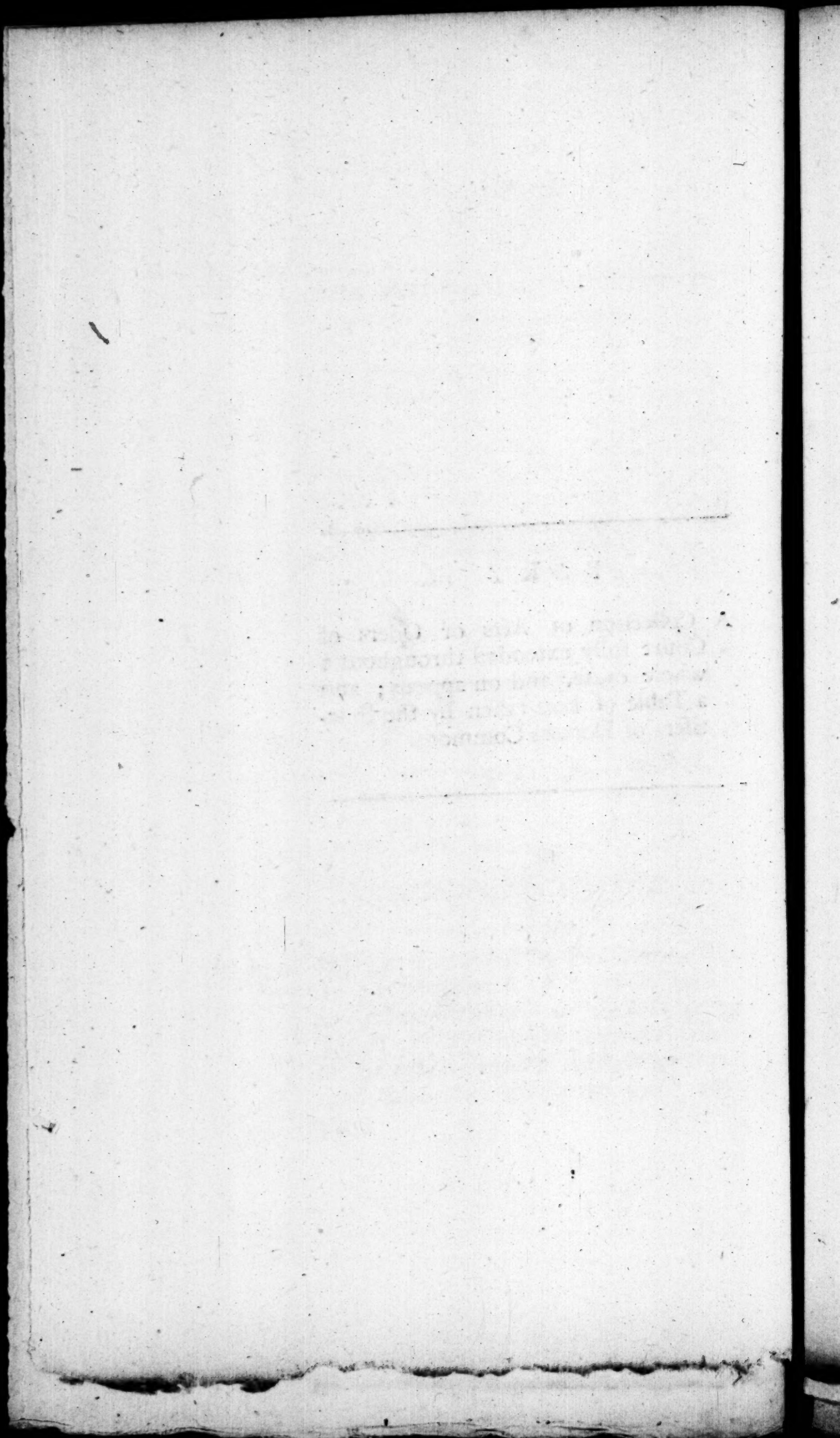
P A R T I I I .

A Collection of Acts or Orders of Court fully extended throughout a whole cause, and on appeals; and a Table of Fees taken by the Practisers of Doctors Commons.



P A R T III.

A Collection of Acts or Orders of Court fully extended throughout a whole cause, and on appeals; and a Table of Fees taken by the Practisers of Doctors Commons.



P A R T III.

*A Collection of Acts or Orders of Court
fully extended throughout a whole
Cause, and on Appeals; and a Table
of fees taken by the Practisers of Doc-
tors Commons.*

C H A P. I.

Acts or Orders of Court.

*H. against H. } ON which day Cook Citation re-
Cook. Sayer. }* returned the ori-^{turned.}
ginal citation by him taken under seal
in this behalf, together with a certifi-
cate of the due execution thereof, of
the truth of which oath hath been
made

Where the party does not appear.

made [then a publick proclamation being thrice made for the party cited] and he not appearing, the judge at the petition of C. accusing his contumacy, pronounced him in contempt, but reserved his pain, and continued the certificate of the said citation to the next court-day. Sayer appeared and exhibited his proxy for the party cited, and made himself a party for him, and prayed a libel to be given by C. otherwise his client to be dismissed with expences; whereupon the judge assigned C. to libel on the next court-day, the said C. dissenting.

Where he appears.

Libel prayed.

Libel ordered.

Libel given.

H. against H. } C is to give a libel
C. S. } C. this day.

Answer prayed.

On which day C. gave in a libel in writing, which he prayed to be admitted, and an answer to be given there-to immediately by S. in the presence of S. dissenting thereto, and alledging that the said libel was not concludent in law, and therefore not admissible by law, and praying the same to be rejected. Whereupon the judge at the petition of C. admitted the said libel, and assigned S. to answer thereto immediately, S. dissenting, but with intention of answering the same contested

Libel admitted.

Negative Issue given.

suit negatively thereto, then prayed; and

and the judge at his petition assigned C. to prove his libel by the next court-day, the said C. dissenting.

H. against H. } **O**N which day S. *Allegation gi-*
C. S. } (as he asserted) *ven.*
gave an allegation in writing, which he prayed to be admitted, and right and justice to be administred to him, and his party in the premisses in the presence of C. dissenting, and alledging the said allegation not to be admissible by law, and praying the same to be rejected, and right and justice to be administred to him and his party in the premisses. Whereupon the judge as- *—to hear the*
signed to hear his pleasure on the ad- *judge's plea-*
mission thereof on the next court-day, *sure on admis-*
and assigned S. to give a copy of his al- *sion.*
legation two days before the court, and if the said allegation be not then admitted, assigned the cause to be concluded the same day.

H. against H. } **U**PON the ad-
C. S. } mission of S's al-
legation (a copy being given two days before) if not, the cause to be concluded at C's petition.

On which day C. alledged, that it had been alledged by S. on the last court day, that he would give an al- *Where no al-*
legation, when in truth he has not *legation given.*
N given

Cause concluded.

given any ; wherefore he prayed, and the judge at his petition concluded the cause, and assigned the same for sentence and information on the next court-day.

H. against H. } **U**PON the admission S's allegation, &c. *ut supra*.

Allegation admitted.

On which day S. prayed the allegation by him given on the last court-day to be admitted, in the presence of C. dissenting and praying it to be rejected ; whereupon the judge having heard the advocates on both sides, admitted the same as far as by law he could ; then the said S. alledged, that A. H. was the most proper person from whom the truth might be better drawn and enquired into, than from the proctor appearing for him in this cause, and prayed ; at whose petition the judge decreed him the said A. H. to be cited by the execution of a decree upon Mr. J. C. notary publick, his original proctor in the cause, or at his office, to appear before him or his surrogate, &c. in the, &c. on the day of, &c. then and there to answer by virtue of his corporal oath to the positions or articles of the said allegation, under pain of the law and contempt thereof, the said C. dissenting.

Decree for answers.

H.

for answers, together with a certificate of its having been duly executed, of the truth of which oath is made; and the said *A. H.* being thrice publickly called, *C.* appeared, and made himself a party for him, and alledged that the said *A. H.* his client resides at or near the city of *N.* in parts remote from hence, so that he cannot attend to give in his answers here without great expence; wherefore he prayed a commission for taking the answers of his said client to the positions and articles of a certain allegation given in and admitted in this cause on the part and behalf of *T. H.* directed to the rev. *A. B.* and *C. D.* clerks, respectively residing in or near the said city of *N.* jointly and severally, assuming a notary publick, indifferent to the parties, and the judge at his petition decreed the same, and assigned the said *C.* to return the same on or before the 8th.

H. against H. } C. Is to return a *The return*
C. S. } C. commission with *expected.*
his client's answers.

On which day the judge at the petition of C. (alleging the commission by him taken under seal to have been

N 2

duly

duly executed, but not yet returned)
decreed the said commission to be expected on the day of this term.

Returned.

H. against H. } C. Is to return a
C. S. } commission, &c.

On which day C. returned the commission duly executed, with the answers of his client, and then the judge at his petition assigned S. to prove the contents of his said allegation by, &c. in the presence of S. dissenting.

*Affirmation of
a quaker to
answers.*

H. against H. } O N which day S.
C. S. } produced C.'s client for his answers, and he then made the following affirmation, (to wit) I A. H. party in this cause, do solemnly, sincerely and truly affirm and declare that I am one of the dissenters from the church of *England*, commonly called quakers, and that my answers to be given in this cause shall be the truth, the whole truth, and nothing but the truth, without favour or affection to myself or my own cause.—— A. H.

The above affirmation was made the day of, &c. before me G. L. surrogate, in the presence of E. N. register.

H.

H. against H. } **O**N which day S. al- *Upon fuller*
 C. S. } ledged the answers *answers.*
 of C.'s client to the allegation, by him
 given in and admitted on the part and
 behalf of his client on the day of
 last, to be neither full, clear
 or plain, in the presence of C. dissent-
 ing, and alledging the same to be full,
 clear and plain; whereupon the judge
 assigned to hear his pleasure upon fuller
 answers on the next court-day, the said
 C. dissenting.

H. against H. } **O**N which day S. al- *Fuller answers*
 C. S. } ledged that he *waved.*
 waves the fuller answers of C.'s client.

H. against H. } **O**N which day S. up- *Witness pro-*
 C. S. } on the allegation *duced.*
 by him given in and admitted in this
 cause on the behalf of his client, pro-
 duced as a witness E. S. whom the
 judge at his petition admitted and re-
 ceived, and administred to him the oath
 usually taken by a witness, and admo-
 nished him to undergo his examination
 when notice should be given to him in
 the presence of C. dissenting, and hav-
 ing the usual time allowed him for in-
 terrogatories or any other time before
 his examination.

H.

*Commission to
examine wit-
nesses decreed.*

H. against H. }
C. S. } ON which day S. al-
ent had several very necessary witnesses
to prove the contents of his allegation,
but that they live in parts remote from
hence, so that they cannot convenient-
ly attend to undergo their examina-
tions here without great trouble and
expence; wherefore he prayed, and
the judge at his petition decreed a
commission to be made out to parts
remote, directed to the Rev. *A. B.* and
C. D. clerks, commissioners named by
and on the behalf of his client, and
also to *C. D.* and *E. F.* clerks, also
commissioners named by *C.* jointly and
severally to sit in the parish church of
N. on the days of next en-
suing, with power of continuation and
prorogation of time and place, as oc-
casion shall require, for the receiving,
admitting, swearing and examining, and
of taking the depositions in writing of
all such witnesses as shall be produced
on the allegation heretofore given in and
admitted in this cause on the part and
behalf of his client, and of taking the
repetition and recognition of the sub-
scriptions of the said witnesses to their
several examinations, they assuming to
themselves a notary publick indifferent
to the parties to be their register; and
the

the said judge assigned the said S. to return the said commission, together with all proceedings had and done thereon, on or before the, &c. in the presence of C. dissenting and protesting, yet having the usual time, as well to annex interrogatories to the said commission, as to administer them at the time of the execution thereof.

H. against H. } S. Is to return a com-
C. S. } mission with exami-
nations. *Commission re- turned.*

On which day S. returned a commission taken out by him in this cause, together with the examinations of the witnesses taken by virtue thereof, and prayed; and the judge at his petition decreed the sayings and depositions of the witnesses examined by virtue of the said commission to be published, and copies thereof to be delivered to each party, in the presence of C. dissenting. *Publication de- creed.*

H. against H. } ON which day the
C. S. } judge at the peti-
tion of S. (alleging that his client had several necessary witnesses to prove the contents of his allegation, but that they live in the diocese of N.) decreed a commission or requisition by way *Requisition for Examinations.*

way of mutual favour, to be directed to the Right Rev. &c. his Vicar General or Official Principal, his Surrogate, &c. to sit in the consistorial place of the cathedral church of *D.* on the days of next ensuing, with full power of proroguing and continuing the said time and place as need shall require, for the producing receiving, admitting, swearing, examining and repeating all such witnesses as shall be produced on the allegation by him given and admitted on the behalf of his client in this cause, assuming to themselves a notary publick indifferent to the parties in this suit, for the execution of the said requisition and examination of the said witnesses so to be produced, sworn and examined by virtue thereof, and assigned the said *S.* to return the said commission or requisition into the registry of this court, together with all proceedings had and done thereon, on or before the, &c. in the presence of *C.* dissenting and protesting, yet having the usual time, as well to annex interrogatories to the said commission or requisition, as to administer them at the time of the execution thereof.

H.

H. against H. } S. Is to return his re-^{requisition re-}
C. S. } quitions for exa-^{tained.}
minations.

On which day S. brought in the requisition by him formerly taken out in this cause, together with the examination of two witnesses, in the presence of C. praying; at whose petition the judge assigned the proctors on both sides to propound all things which are necessary for them respectively to propound on the next court, day, the said C. dissenting.

H. against H. } O N which day S. al-^{Compulsory}
C. S. } ledged that A. B. ^{decreed.}
and C. D. were, and are very necessary witnesses to prove the contents of the allegation by him given and admitted in this cause, who having been offered their necessary travelling charges and expences, have and do still refuse to come and attend to give their testimony in this cause, unless by law they are compelled thereto; wherefore he prayed, and the judge at his petition decreed the said A. B. and C. D. to be cited and compelled to appear personally before him, his surrogate, or, &c. in the, &c. on the, &c, then and there to take the oath usually taken by witnesses,

nesses, and to testify the truth of what they know in this cause, under pain, &c.

Ditto Viis et Modis. H. against H. }
C. S. }

* *In like manner are citations Viis, &c. and monitions and decrees to be set forth.*

ON which day the judge, at the petition of S. * alledging that A. B. and C. D. were diligently sought for and inquired after at their respective places of abode, by the mandatory in this behalf lawfully authorized, with an intent to have cited them personally (if they could have been found) to give their testimony in this cause, but could not there be met with, decreed them to be again cited personally (if they can be so found), otherwise by publickly affixing a decree for some time upon the outward doors of the several houses, or last usual places of abode of the said A. B. and C. D. or on the outward doors of the parish churches of the parishes wherein they now do, or lately did dwell, on the Sunday or festival day next and immediate following the receipt of the said decree, during the time of divine service, and by leaving there affixed a true copy thereof, and by all other lawful ways, means and methods whatsoever, whereby the said decree may most likely come to the knowledge

ledge of them the said *A. B.* and *C. D.*
to appear before him, his surrogate,
&c. (as in the compulsory act)

H. against *H.* } **O**N which day a pub-
C. S. } lick proclamation *Excommunica-*
being thrice made for *A. B.* the party *tion decreed.*
cited, and he by no means appearing,
but contumaciously absenting himself,
the judge at the petition of *S.* (accusing
his contumacy) pronounced him in
contempt, and for such his manifest
contumacy and contempt decreed him
to be openly and publicly denounced
and delared to be excommunicate in
the face of the church, but ordered
the excommunication not to be ex-
tracted within a week from this day.

H. against *H.* } **O**N which day *S.* ex- *Excommunica-*
C. S. } hibited letters of *tion brought in*
excommunication duly denounced, to-
gether with a certificate of the due pub-
lication thereof on the back of the
same, and alledged that *A. B.* therein
named was and is by the authority of
this court excommunicated, and as such
at proper time and place duly denoun-
ced, and that he had stood under the
sentence of excommunication for the
space of forty days and upwards after
the denouncing thereof, and still perse- *The party to*
veres in the same out of an obstinate *be signified.*
dis-

disposition, and contemning the ecclesiastical jurisdiction; wherefore he prayed, and the judge at his petition decreed it should be wrote to the king's majesty for his writ for the taking of his body.

Absolution decreed.

H. against H. } ON which day ap-
C. S. } peared personally
A. H. the party principal in this cause, and, without revoking his proctor constituted in this behalf, alledged that for his contempt in not giving in his personal answers to a certain pretended libel admitted in this cause he had been excommunicated, and that such excommunication had been denounced against him, and that having remained under the said sentence of excommunication for the space of forty days, it had been signified to his majesty for a writ for the taking his body, and that such writ had issued and a warrant thereupon, and that thereon he is now in custody, but that he is now willing to submit to the said assignation, and to give in his answers to the said libel [whereupon *C.* produced him for his answers, and the judge gave him the oath, and the said *A. H.* exhibited his answers in writing, and acknowledged his subscription thereto], and alledged that he had paid the contumacy fees in-

incurred by his aforesaid contempt, and therefore he prayed to be absolved; whereupon the judge gave him the oath, that he would be obedient to his majesty's ecclesiastical laws, and the lawful commands of his ordinary for the future, and that he would not wilfully incur sentence of excommunication again, and then decreed him the said *A. H.* to be absolved and freed from the sentence of the excommunication denounced against him, and an absolution to pass the seal accordingly, in the presence of the said *C.* not opposing the same.

H. against *H.* } **F** O R information
C. S. } and sentence at the
petition of *S.*

On which day *S.* porrected a difini- *Sentence por-*
tive sentence in writing, which he prayed *rected by one.*
to be read, promulged and given, and
right and justice to be done and admini-
stered to him and his party in the pre-
misses, in the presence of *C.* dissenting,
and praying right and justice to be ad-
ministered to his client; whereupon
the judge having heard the advocates
and proctors on both sides, read, pro-
mulged and gave the sentence by *S.* *Sentence read.*
porrected, thereby pronouncing, de-
creeing, declaring and doing in all
things as in the same is contained;
then

Bill of costs then S. porrected a bill of expences
porrected.

—*taxed.*

*Monition for
payment.*

*Oath made of
the bill.*

made or to be made on the behalf of his client in this cause, which he prayed to be taxed; and the judge at his petition taxed the same at the sum of of lawful money of *Great Britain*, besides the sum of 14s. 10d. for the expences of a monition for the payment thereof, extending in the whole to the sum of Then S. made oath that his client hath, and must necessarily expend the sum taxed, and prayed; and the judge at his further petition decreed C.'s client to be monished to pay or cause to be paid to S's client, or her proctor, the said sum taxed, besides the expence of the monition, extending as aforesaid, within ten days after the said monition shall have been duly executed, but ordered that the said monition should not go under seal within ten days from this time, there being then and there present with me the register aforesaid, the worshipful G. P. and J. A. respectively, doctors of law, advocates of this court, and also E. G. and B. R. notaries publick, proctors of the said court, as witnesses.

Party dismissed from further proceedings.

H. against H. }
C S. } ON which day the
judge (having
heard advocates and proctors on both
sides)

sides) did, by his final interlocutory decree, having the force of a definitive sentence, in writing, dismiss S's client from all further judicial observation in this behalf, and condemned C's client in costs ; and the said S. porrected a bill of expences, which he prayed to be taxed, but the judge reserved the taxation thereof to the next court-day.

Bills of costs porrected.

Taxation reserved.

H. against H. } FOR sentence at
C. S. } S's petition.

On which day the proctor's on both sides porrected sentences in writing, which they respectively prayed to be read, promulged and given, and right and justice to be effectually done and administred to them and their parties respectively in the premisses ; whereupon the judge having heard the advocates and proctors on both sides, and having maturely considered this business, read, promulged and gave the sentence porrected by S. thereby pronouncing, declaring, decreeing and doing in all things as in the said sentence is contained, the said C. praying sentence as before, protesting of a grievance done to his client, and of appealing in due time and place, there being then and there present, &c. as witnesses ; upon all which premisses the said S.

Sentences porrected on both sides.

— read.

Protestation of a grievance and of appealing.

*Register to
make an in-
strument.*

S. requested me the said register to make him one or more publick instrument or instruments, and to subscribe and deliver the same to him.

A^{ts} in a Cause of Appeal.

*Act on decre-
ing the inhibi-
tion, citation
and monition.*

A Business of appeal and complaint of nullity promoted and brought by *G. A.* of *C.* in the diocese of *B.* and province of *C.* the party appellant and complainant on the one part, and *M. S.* of the parish, diocese, and province aforesaid, the party appellee and complained of on the other part.

C.

On which day *C.* exhibited as proctor for the said *G. A.* and made himself party for him, and alledged that the worshipful *T. R.* LL. D. vicar general and official principal of the right rev. father in God *T.* by divine permission, lord bishop of *B.* or his pretended surrogate, unduly and unjustly proceeding in a certain pretended cause of — which lately depended in judgment before him or his pretended surrogate, between *M. S.* the pretended

*Describe it as
in the original
process.*

party agent and complainant on the one part, and his client the said *G. A.* the party accused and complained of on the other part, did as well by virtue of his own pretended office, as at the unjust solicitation, instigation, procurement and petition of the said *M. S.* by his interlocutory decree, having the force of a definitive sentence in writing, decree ——— to the very great detriment and prejudice of the said *G. A.* and that it had been instantly on the part and behalf of the said *G. A.* in due form of law from all and singular the grievances aforesaid, and from all and singular other the grievances, nullities, iniquities, injustices, injuries and errors in the proceedings of the said pretended judge or his pretended surrogate, rightly and duly appealed to the arches court of *C.* and to the official principal thereof; wherefore the said *C.* prayed, and the surrogate aforesaid at his petition decreed the said worshipful *T. R. L. L. D.* the judge aforesaid, his surrogate or surrogate's register and actuary, the said *M. S.* in special, and all others in general (who by law in this behalf ought to be inhibited) to be inhibited, that neither they, any or either of them, pending this cause of appeal and complaint, do attempt or cause to be attempted

Here recite the grievance.

The inhibition.

O

attempted

Citation.

*Monition for
the proceed-
ings.*

attempted or done any thing to the prejudice of the said *G. A.* whereby he may be impeded in the prosecution of such appeal; and also decreed the said *M. S.* to be cited to appear before the official principal aforesaid, his surrogate, or some other competent judge in this behalf, in the common hall of *Doctors Commons, London*, and place of judicature there, on the sixth day after his being served with a citation to that effect, if it be a court-day, otherwise on the court-day from thence next following, at the usual hours for hearing causes and doing of justice there, then and there to answer to the said *G. A.* in his said cause of appeal and complaint; and further to do and receive as to law and justice shall appertain; and at the further petition of the said *C.* decree the said worshipful *T. R. L. L. D.* his surrogate or surrogate's register or actuary in special, and all others in general with whom any of the proceedings touching or concerning the said cause, may or do remain to be monished, to transmit the same in a due and authentick form into the registry of the said arches court on or before the day of next ensuing, under pain of the law and contempt thereof
A.

A. against S. } ON which day C. re-
C. S. } turned the original *Inhibition and*
inhibition and monition by him taken *Monition re-*
turned.
 under seal in this behalf, with proper
 certificates of their having been duly ex-
 ecuted; then publick proclamation be-
 ing thrice made for the parties cited
 and admonished, and they nor either
 of them appearing, &c. [as in the act
 in the first instance] S. appeared, ex-
 hibited his proxy, and made himself a
 party for them and prayed a libel, &c.
 [as in the first instance.]

A. against S. } ON which day C. ex-
C. S. } hibited an appeal *Appeal exhibi-*
ted.
 in writing, and alledged the same to
 have been rightly and duly made and
 interposed in due time and place, and
 to have been subscribed by an honest
 and lawful notary publick, and by
 witnesses of good faith and credit; and
 that G. A. and M. S. mentioned in the
 said Appeal, and G. A. and M. S.
 parties in this cause were and are
 the same persons, and not divers, and
 prayed an answer to be given imme-
 diately thereto by S. to which he dis-
 sented, but confessed the said subscrip-
 tion and identity to be true.

*Monition for
things omitted
in transmiss-
sion.*

A. against S. } ON which day C. al-
C. S. } ledged that a
had issued under the seal of the judge
from whom this cause is appealed, and
that notwithstanding the premisses the
said was totally omitted in the pro-
ceedings of the said judge, transmitted
to the registry of this court; where-
fore he prayed, and the judge at his pe-
tition decreed the judge from whom
this cause is appealed, his furrogate,
register, or actuary in special, and all
others in general, in whose power,
custody or possession the said original
may or doth remain, to be mo-
nished to transmit the same, or cause
it to be transmitted to him, his furro-
gate, or, &c. in the &c. on or before,
&c. under pain, &c.

*Monition for
an original
will.*

A. against S. } ON which day, S.
C. S. } alledged that the
original last will and testament of *A. B.*
the testator in this cause deceased, ex-
hibited and pleaded on his client's be-
half in the first instance of this cause,
doth now remain in the registry of the
consistory court of *H.* wherefore he
prayed, and the judge at his petition
decreed the worshipful *E. W. L. L. D.*
vicar general, &c. the pretended judge
from whom this cause is appealed, and
his

his furrogate, register or actuary in special, and all others, &c. in whose power, custody or possession the said original will is, or doth remain, to be cited and monished, that they or one of them do on or before the, &c. next ensuing, transmit, or, &c. [as before].

A. against S. } ON which day H. ex-
C. S. } hibited as proctor
for B. R. notary publick, principal
register of the arches court of C.
from whence this cause is appealed,
and made himself a party for him and
alledged that the expences of transmit-
ting the process brought in, in the said
cause, and remaining in the registry
of this court, amount to and are taxed
at the sum of and that the
sum of was paid by *P. P.* the
officer of the said court to the said
B. R. in part or on account of the ex-
pences of the said transmission, and
that the sum of remains due to
the said B. R. for the expences of trans-
mitting the said process, and that the
said G. A. refuses to pay, or at least has
deferred paying to the said B. R. the
said sum of wherefore the said
H. prayed, and the judge at his peti-
tion decreed the said G. A. to be mo-
nished to pay or cause to be paid effec-
tually to the said B. R. the said sum
of

*Monition for
 expences of
 transmitting
 process Sub
 poena, &c.*

of and also the sum of
for the expences of a monition to be
extracted in this behalf, and for the
execution thereof, amounting in the
whole to the sum of of lawful
money of *Great Britain*, within ten
days after the said monition has been
served upon him, under pain of the
greater sentence of excommunication,
and decreed the said *G. A.* (in case he
does not pay the said sum before tax-
ed in manner and form aforesaid) to
be openly and publicly denounced ex-
communicate in the face of the church.

*Admission into
second year.*

A. against S. } ON which day C. al-
C. S. } ledged that it is a
year since the appeal was interposed
on the behalf of his client in this
cause, and prayed, and the judge at his
petition admitted him into a second year.

*Appeal pro-
nounced for.*

A. against S. } ON which day the
C. S. } judge (having heard
advocates and proctors on both sides)
did by his final interlocutory decree
pronounce for his jurisdiction, and for
the validity of the appeal and com-
plaint made and interposed in this be-
half, and that the same were for just
and lawful causes made and interposed,
and that the judge from whom this
cause was appealed had proceeded nully
and

and unjustly, and reserved the sentence by him read, &c.

A. against S. }
C. S. } ON which day S. ex-*Appeal re-*
hibited a special *nounced.*
proxy under the hand and seal of M. S.
his client, the party appellant in this
cause, whereby she renounced her ap-
peal; then R. prayed, and the judge at
his petition did by his final interlocu-
tory decree, having the force of a de-
finitive sentence in writing, decree
this cause to be remitted, with all its *Cause re-*
incidents, emergents, dependants, and *mitted.*
things adjoined and connected thereto,
to the judge, from whom the same in
this behalf was appealed, and to his
examination.

Other Acts occurring in a Cause.

H. against H. }
B. S. } ON which day B. *Money decreed*
porrected a bill of *on account.*
expences, which he prayed to be taxed,
and the judge decreed 20*l.* on account
of expences of this suit, to be paid by
the said S.'s client to the said B. or his
client, in the presence of S. dissenting,
but undertaking to pay the same with-
in a week, &c.

H.

Act in a defamatory cause where the defendant confesses the libel, and is enjoined penance. *H. against H. R. C.* } **O**N which day *R.* prayed that *C.* might be obliged to answer to the libel by him given, &c. whereupon the said *C.* by answering contested suit thereto affirmatively, which answer the said *R.* accepted, and prayed that *C.*'s client might be enjoined a salutary and usual penance, and be condemned in costs and right, &c. and the judge at his petition enjoined *M. H. C.*'s client, a salutary penance, to be performed in the vestry of the parish church of *S.* on Sunday the, &c. in the forenoon of the same day, immediately after divine service and sermon ended, and assigned the said *C.* to extract a schedule of the said penance out of the registry of this court, and to certify the due performance thereof on the next court-day, (to wit) &c. and also condemned *C.*'s client in costs of suit, according to the style of the court which he taxed at, &c. and further ordered the said costs to be paid before the said schedule be extracted.

Act on exhibiting letters of request, and granting a decree for answers pursuant thereto. **A** Business of exhibiting letters requisitorial under the seal of the lord bishop of *L.* in a certain cause depending } Which day *G.* exhibited his proxy for the said *C. D.* and made him-

ing in the consistory court of *L.* between *A. B.* of the one part, and *C. D.* of the other part. | himself party for him, and alledged that there is a certain cause now depending before the worshipful, *Ec.* promoted by the said *A. B.* against the said *C. D.* and that by reason the said *A. B.* is now residing within the diocese of *L.* the said worshipful, *Ec.* had decreed letters requisitorial, directed to the right rev. *Ec.* and his vicar general, surrogate, or, *Ec.* thereby requesting them, to cite or cause to be cited the said *A. B.* to appear before the said, *Ec.* his surrogate, *Ec.* in the consistory court of *L.* and place of judicature there, between the hours of, *Ec.* then and there to answer by virtue of his corporal oath to the positions and articles of an allegation given in, *Ec.* on the part, *Ec.* of the said *C. D.* as in and by the said letters requisitorial, which the said *G.* then exhibited, doth appear; wherefore he prayed, and the surrogate at his petition did accept of the execution of the said letters requisitorial, and thereupon decreed the said *A. B.* to be cited to appear on the day, time and place, and to the effect in the said letters requisitorial mentioned.

H.

*Ad on grant-
ing admini-
stration pend-
ing suit in case
of bona peri-
tura.*

*H. against H. }
G. H. }*

ON which day G. al-
leged that E. B.
late of, &c. the party in this cause de-
ceased, died possessed of a great perso-
nal estate, and that some part thereof
consisted in wines, which will daily les-
sen in value by their wasting and leak-
age; and that several debts which are
owing to the said E. B. are accounted
dubious and in great danger of being
lost, unless some proper person be not
speedily appointed by the authority of
this court to receive the same; and in
order to verify what the said G. so al-
leged, he the said G. exhibited two
affidavits, which the judge at his petiti-
on admitted, and then the said G. pray-
ed letters of administration of the goods,
&c. of the said E. B. (during this suit
only) to be granted to E. S. and offer-
ed to give any security to the court for
his due administration therein; there-
upon the judge decreed the same (pend-
ing this suit only) to be committed to
G. B. of, &c. vintner, in case H. does
not object to the said G. B. as not being
a proper person to have the said admi-
nistration by——day next, he the
said G. B. giving sufficient security to
the court in the sum of, &c. for his due
administration thereof.

C.

C. against D. }
 T. B. } ALL parties are to *AA on exhibit*
 exhibit affidavits of *biting an affi-*
 their client's debts. *davit of a cli-*
ent's debt.

On which day T. exhibited an affida-
 vit of his client's debt in the presence of
 B. who exhibited also an affidavit of his
 client's debt, and made himself a party
 for him and prayed, and the judge at his
 petition decreed a commission of ap- *Commission of*
 praisement to issue under seal directed to *appraisement*
 A. B. and D. D. commissioners named *and monition*
 by T. and to C. D. and E. F. commis- *decreed.*
 sioners named by B. to sit on the
 days of to inspect, appraise,
 and take an inventory of all and singu-
 lar the goods, chattels, credits, books
 and paper writings that are part of, or
 any way relate to the personal estate of
 the said deceased, with a power to ad-
 journ and prorogue the execution of the
 said commission from time to time, and
 from place to place, if needful: and at
 the further petition of T. the judge de-
 creed the said A. C. in special, and
 all others in general to be monished to
 shew to the said commissioners, or to any
 two or more of them, all such goods,
 chattels, credits, books, papers or wri-
 tings that are part of, or any way relate
 to the personal estate of the said decess-
 ed, under pain of the law, &c. the said
 B. dissenting and praying, at whose pe-
 tition

*Administra-
tion decreed on
giving an in-
ventory and
notice of the
security.*

tition the judge assigned the said *T.* to extract the said commission within a week, which if not done, the judge decreed the administration to be granted to *B's* client upon his exhibiting an inventory upon oath, and giving security and notice thereof to *T.* and in case *T.* does extract his commission, the judge at *B's* petition assigned him to return the same on the day of next.

C H A P. II.

A Table of the Fees allowed to be taken by the Practitioners in Doctors Commons, as settled by a Jury the 19th of November 1734.

Register's fees.

T O the Register for the	}	<i>l.</i>	<i>s.</i>	<i>d.</i>
Copy of Answers (if one Sheet)		0	4	6
For every other Sheet (Stamps included)	}	0	2	0
For the Copy of a Sentence, or Interlocutory decree and Stamp		0	7	8
				For

A Table of Fees.

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	<i>l.</i>	<i>s.</i>	<i>d.</i>	
For the Copy of any com- mon Record	}	0	4	4
Attending with Records at another Court the first day	}	1	0	0
For every other Attendance	0	10	0	
Poundage of Money brought into Court <i>per</i> Pound	}	0	0	2
For a Bond in a Cause of Le- gacy and Stamps	}	0	14	10
For two Receipts registering Register's Attendances	0	3	4	
	0	3	6	
For the Service of a Process within the Bills of Mor- tality	}	0	2	6
Serving a Compulsory upon the first Witness	}	0	2	6
— Upon every other	0	1	0	
— A Decree for Answers upon a Proctor	}	0	1	0
For every Sentence or In- terlocutory	}	0	2	0
Reporting Securities	0	2	6	
For every Witness sworn in Court	}	0	0	6
For citing a Peer <i>more Pro- cerum</i>	}	0	5	0
For the Copy of a Will (fif- teen Lines and six Words in a Sheet)	}	0	0	10
For the Copy of an Admini- stration, Bond and Stamps	}	0	5	0
				To

Apparitors.

To Registers.

A Table of Fees.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
To the Clerk looking it up	0	1	0
<i>Proctor and</i> <i>regifter.</i> The whole Fees for a Facul- ty to remove a Corpse }	3	10	10
— <i>Ditto</i> for building a Vault	4	6	8
For a Sequestration under Seal and Stamps }	1	1	8
Relaxing the same	0	13	4
To the Officer (if in <i>London</i>) (<i>2s. 6d.</i>) in the Country }	0	5	0
<i>To the regif-</i> <i>ter.</i> Drawing an Institution, Mandate, Certificate and Letters Testimonial }	4	8	0
If Caution is given then ex- traordinary for it }	0	6	8
Stamp	0	1	6
For Institution to any pre- bend of <i>Canterbury</i> }	4	8	0
Every Collation is	2	18	8
Every Lecturer and Curate's Licence }	1	19	4
—Parish Clerk's Licence	1	15	8
—Sexton's ditto	1	12	8
Whole Fees for an Admini- stration (under <i>20l.</i>) of a <i>Proctor and</i> <i>regifter.</i> Sailor in the King's Ser- vice }	0	7	0
Probate of a Will <i>ditto</i>	0	7	6
For an Administration under <i>5l.</i> in other Cases }	0	7	0
For an Administration under <i>20l.</i> in other Cases }	1	1	0
— <i>Ditto</i> under <i>40l.</i>	1	18	0
			For

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For an Administration above 40 <i>l.</i>	2	5	0
A Commission for an Administration, Instructions and Return	1	10	0
For a Probate (under 20 <i>l.</i>) the Will short	1	4	10
<i>Ditto</i> above 20 <i>l.</i>	1	14	0
A Commission for a Will, Duty, &c.	1	8	0
For an Exemplification of a Will	0	10	4
Exemplifying Engrossing (according to Length	0	1	0
Seal	0	7	2
In a Will without Witness, where the Hand-writing is to be proved by two Witnesses, the Affidavit and Stamp is	0	7	8
Oaths	0	5	4
Whole Fees of a Guardianship (if you have a copy attested by the Register) are	1	1	0
If not, you deduct 7 <i>s.</i> 8 <i>d.</i> remains	0	13	4
Expences of having an original Will attended with at Affizes			
Searching and looking up the Original	0	3	4

Re-

A Table of Fees.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Record Keeper's Fee	0	2	0
Affidavit and Stamps	0	7	8
Oath and Record Keeper's Attendance	0	4	6
Copy of the Will to lie in the Room of the Original, and Stamps (according to the length)			
Collating by Notaries	0	5	0
Receipts	0	1	8
Record Keeper's Fee attending at Assizes <i>per</i> Day	1	1	0
Attending on delivering out the Original	0	6	8
Register's Fees on Delivery	1	0	0
For a Proxy to appear for Plaintiff or Defendant	0	6	4
Drawing a Declaration instead of an Inventory	0	7	8
Oath and Attendance	0	4	4
A Marriage Licence	1	4	6
For a Sequestration or Renunciation of Administration	0	6	8
For the first Term-Fee in Causes	0	5	0
For every other Term-Fee	0	3	4
Every judicial attendance	0	3	4
Extrajudicial <i>ditto</i>	0	6	8
For every act sped in court in Term, you charge	0	1	8
Out of Court	0	2	4

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E. A. B. P.

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